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ACQUISITIONS BY FOREIGN COMPANIES

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

FOREIGN ACQUISITIONS OF DOMESTIC COMPANIES

JUNE 10, 1987

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CONTENTS

	Page
Opening statement by the Chairman	1
Opening statement by Senator Danforth	1
Opening statement by Senator Exon	2

LIST OF WITNESSES

Baldrige, Hon. Malcolm, Secretary, Department of Commerce	2
Prepared statement	19
Darman, Richard, former Deputy Secretary of Treasury; and Robert McNeill, executive vice chairman, Emergency Committee for American Trade	47
Prepared statement	51
Mercer, Robert, chairman of the board and chief executive officer, Goodyear Tire & Rubber Co.; and Joseph L. Parkinson, chairman of the board and chief executive officer, Micron Technology, Inc.	22
Prepared statements:	
Mr. Mercer	25
Mr. Parkinson	29

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Baker, Hon. James A., III, Secretary, Department of the Treasury, letter	68
BP North America, Inc., statement	65
Katz, Abraham, president, U.S. Council for International Business, letter	74
O'Brien, Charles O., executive vice president and chairman of the board, CIBA-GEIGY, letter	67
Robinson, James D., III, chairman, Trade and Investment Task Force, Business Roundtable, letter	71
Trowbridge, Alexander B., president, National Association of Manufacturers, letter	73
Volcker, Hon. Paul A., Chairman, Federal Reserve System, letter	69
Whitehead, John C., Acting Secretary, Department of State, letter	76
Yeutter, Hon. Clayton, U.S. Trade Representative, letter	70

ACQUISITIONS BY FOREIGN COMPANIES

WEDNESDAY, JUNE 10, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (Chairman) presiding.

Staff members assigned to this hearing: Sally Susman, professional staff member; Loretta Dunn, staff counsel; and Mark Farrell, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

We are pleased this morning to hear from our Secretary of Commerce relative to the foreign acquisitions of domestic companies that could affect our national security or essential commerce.

Last week we had an amendment by the Senator from Nebraska in this particular regard. It was noted that we had not heard from the administration or other witnesses. And at the suggestion of our ranking member, we are glad now this morning to have this hearing and see what we can learn.

Secretary Baldrige, we welcome you back to the committee. We will be delighted to hear from you at this time.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, I know that Secretary Baldrige has another commitment and because of that I will only say that I appreciate your holding this hearing of the committee.

It was not my idea to act as an obstructionist last week. However, I do feel that this is an extraordinarily important subject matter, which deals with our trade policy and which further deals with international economic movement, capital flows, national security, and the like.

And for that reason, and believing that the Administration and the Federal Reserve and certain people in the business community have real concerns about the Exon amendment, I did ask for this hearing.

I appreciate it being held and I appreciate the Secretary being here.

The CHAIRMAN. Very good.

Senator Exon.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. I appreciate the continued support of the chairman for the National Security and Essential Commerce Amendment. I would also like to express my appreciation to the staff of the Senate Commerce Committee for their excellent work organizing this hearing under very tight time restraints.

Last week, this committee discussed at length the intent and implications of the National Security and Essential Commerce Amemdment which I offered to the Commerce Committee's trade initiative. I am hopeful that this hearing will resolve the remaining concerns of certain members of this committee and that the committee will be allowed to move forward to do its work.

I look forward to the Testimony of today's witnesses. The Secretary of Commerce is a long-time friend and fellow Nebraskan. Not too long ago we began as voices in the wilderness and eventually built a chorus of concern when Fujitsu of Japan attempted to acquire the semicondutor facilities of Fairchild; Mr. Mercer and Mr. Parkinson are among America's top corporate leaders and Mr. Darman and McNeil are accomplished advocates for free trade.

The amendment before the committee is a simple proposal which grants the President discretionary authority to review and act upon foreign takeovers, mergers acquisitions, joint ventures and licensing agreements which threaten the national security or essential commerce of the United States.

The essential question which this committee must answer is: Should the President have the authority to intervene in a merger, acquisition, or hostile takeover to protect the national security or essential commerce?

The legislation before the committee does not compel action, it simply prevents future Presidents from throwing up their hands and saying "I cannot do anything," while America's national security industries and technologies fall under foreign control.

As the value of the dollar continues to drop, there will certainly be a new wave of foreign takeovers of American companies and productive assets. Many of the most vulnerable takeover targets are in the defense industry.

In this environment, the President should be appropriately prepared and possess the necessary tools to deal with the possiblity of a foreign merger which would threaten the national security.

I have no objection to foreign investment in and of itself. I welcome foreign investment in Nebraska and the United States. The legislation before the committee in no way intends to "chill" foreign investment.

I only wish to arm the President with the appropriate authority to protect the national security.

Thank you. Mr. Chairman.

The CHAIRMAN. Mr. Secretary.

STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY, DEPARTMENT OF COMMERCE

Secretary BALDRIGE. Thank you, Mr. Chairman.

Let me simply say, in lieu of an opening statement, which I would like to have included for the record——

The CHAIRMAN. It will be included.

Secretary BALDRIGE. That I will just make a couple of opening sentences.

In today's global economy, the various economies around the world are interdependent. That becomes more true every day.

The second truth, I believe, is that today in this interdependent world economy investment is trade, and trade is investment. You cannot separate the two. So any action we take on investment, we have to look on as affecting trade.

We as an administration—and I will say, this was my personal opinion before the administration took a position, Mr. Chairman—we are opposed to the Exon proposal because we think it will mean a diversion away from the principles that we have been trying to espouse around the world and the other nations, which is national treatment for investment, open investment policy, and everything that goes with it. That downstream leads to the same kind of treatment in trade in general.

Thank you. I would be glad to take any questions that you have.

The CHAIRMAN. But you say the policy is an open investment policy? That cannot necessarily be true. You were the one who raised the alarm relative to Fairchild and Fujitsu's proposed takeover there.

I think it was your office, is that not correct?

Secretary BALDRIGE. Yes, sir. The administration's investment policy set out by the President in 1983 is for open investment, with the exception of national security or related issues.

And on the particular case you mentioned, I felt, the security agencies, the U.S. Government felt, that there was a national security issue that should be looked into. There was not a final determination made because Fujitsu happened to withdraw the attempted merger.

But that would have been the issue had they continued, and I do not know how it would have come out. But that is the exception, for security reasons.

The CHAIRMAN. Save for national security, which is what I think the Senator from Nebraska has in mind. There is a general sense, an unease in the Congress amongst the people as to foreign investment and takeovers.

Of course, the governors of the several states have got offices in Tokyo and in Europe and everywhere else trying to attract foreign investment. And it has been so successful, not only on account of their solicitations, but on account of the Japanese having all the money. They are now buying up these various industries that have no relation perhaps to national security.

But it seems like the Department of Commerce or some Department should have a general overall responsibility to be looking at the foreign investment. You do not think so?

Secretary BALDRIGE. Oh, no——

The CHAIRMAN. Who is going to look at it?

Secretary BALDRIGE. Sir, I am saying that this would duplicate the system we already have. In the first place, in the Commerce Department, in our International Trade Administration and the Bureau of Economic Analysis, we do gather the information there of foreign investments in the United States. So we have that done.

We do not identify them specifically. We do not make public disclosure, because we do not believe that that furthers investment. And it is what we have been trying to get other countries around the world not to put in our way.

So there is a way to aggregate all of these investments. They are all looked at in that sense, in the aggregate. If any member of CFIUS, the Committee on Foreign Investment in the United States, which includes Defense, State, Commerce, Treasury, USTR, and the Council of Economic Advisors, if any of them through any of their constituencies feels that a particular investment should be looked into, that can be put on the agenda and CFIUS will look into it. They have done that in the past.

The CHAIRMAN. But who do you deem to have that responsibility, the International Trade Administration in Commerce or that Committee on Foreign Investment?

Secretary BALDRIGE. The Committee on Foreign Investment in the United States, which is an interagency committee made up of the people I told you about.

It happens that the Treasury is the chairman of that, but we have no trouble getting any investment we want looked at on the docket, and no one else does either that I know of.

The CHAIRMAN. What is the function of the International Trade Administration?

Secretary BALDRIGE. Well, the International Trade Administration collects figures on foreign investment, investment by investment, and puts them in an aggregate number.

For example, the foreign direct investment in the United States now went up $31 billion last year. We know that. We have people that follow each piece of investment news and, as I said before, aggregate it. Investment went up $31 billion.

We probably have $320 billion worth of foreign direct investment in the United States now. That is probably one to two percent of our total direct investment. So we have those aggregate figures.

If anyone, for any reason, in a Department feels that a particular investment could harm the national security or related security matters, then CFIUS will take that up individually.

The CHAIRMAN. So essentially, the International Trade Administration is sort of a watchdog, and if they see something that gives concern then they alert the Committee on Foreign Investment; is that it?

Secretary BALDRIGE. Well, we could do that, or if Treasury saw something that would give them concern, or State or the Fed. Anybody on the CFIUS can bring up a particular investment.

The CHAIRMAN. And then, having done that with CFIUS, what does CFIUS do other than review and look and look and review? What authority do they have? That is what concerns some members of this committee.

Secretary BALDRIGE. Well, it depends on what the concerns are. If CFIUS looks at a particular investment, for example frequently there might be an antitrust concern raised. If so, we get the Justice Department to take a look at it.

If it is a problem of classified—not classified information, but weapons that we do not want foreign interests to be producing

here, the Department of Defense takes a look at it then and decides what parts of the business will have to be sold.

The CHAIRMAN. Do they have authority for that? You feel that they do?

Secretary BALDRIGE. Yes, they do under this.

We have our antitrust laws, as I said. We also have the IEEPA, the International Economic Emergency Powers Authority, which under unusual or extraordinary circumstances the President can deny any investment.

In case that the worry is that they are going to export barred materials or technology abroad or could, why, we have the Export Administration Act. We have got sectoral controls that are automatically in place on atomic energy, radio broadcasting, Comsat, Landsat, aviation, mining laws and so forth.

We really think that there is enough laws and regulations, Mr. Chairman, to do what we want. And we are very concerned about the possibility of chilling any investment in the United States, because we think that is really a good—that is a plus on both sides.

It helps us and it helps the investor. I also am mindful of the fact that the United States has gone around the world investing for years and years and years, and it is in our interests to be able to keep on doing that.

The CHAIRMAN. Well, I do not think anyone opposes foreign investment. What we are really looking at is that investment which would jeopardize the essential commerce or national security of the United States.

I have a feeling, and I am confident that other Senators do, that we have in place at best a bureaucratic shuffle. You go from the committee to the international economic authority, to the Export Administration Act, to the antitrust, on over to the Defense.

While everybody is running around like a dog chasing his tail, what happens? It seems that that bureaucratic shuffle, Mr. Secretary, would be the chilling effect. I am a foreigner, I want to buy into an American company, but I understand now from Secretary Baldrige's testimony before the Congress that there are so many agencies that I cannot hire enough Washington lawyers to check them all.

It seems perhaps it would be well worth the while of the government to have fixed in place a checkoff, so that one would know when one had bought the company that it was a valid purchase, and one would not then be faced with the shuffle.

As it appears to me right now, I think what we do have is perhaps a chilling effect, which was seen in the action with Fujitsu.

It could be that you would give notice and then there would be a checkoff by the Department of Defense, or your Department of Commerce, or something fixed and precise.

I am confident the Senator from Alaska and I both are concerned about that. But you comment if you wish, and then I want to yield to Senator Danforth.

Secretary BALDRIGE. Mr. Chairman, I think the trade lawyers around town are serving very well the foreign investors who come over here. I do not see anybody that really does not understand what, if any, problems they might have in making an investment.

The fact is they have very, very few problems. I mean, everybody understands the antitrust laws, or should if they do not. If it is a national security issue, that should be fairly clear, too.

So we really do not have a chilling effect now. Investment has been proceeding, with very, very few cases challenged by CFIUS. We have not had a turn-down since I have been here, to my knowledge on national security reasons.

One of the ways that we are trying to strengthen the CFIUS process is to have the National Security Council lead a review of what you are talking about, in essence what are the boundaries and so forth when we talk about the national security, national interest, so we have a little better perception of what we are talking about.

That review is in process now. But that is the only one that I would recommend, because everything else is in place to do the kinds of things that I believe you are concerned about.

The CHAIRMAN. Thank you.

Senator DANFORTH. Mr. Secretary, let me see if I understand your position, and correct me where I misstate it. There are certain circumstances where our government would like to be in a position of interfering with mergers or acquisitions by foreign countries of American companies.

Those instances pertain to national security or to highly sensitive industries which are perhaps vulnerable to targeting practices by foreign countries.

We have in place now the Committee on Foreign Investment in the United States or CFIUS, which was created by a presidential executive order, and it consists of the Departments of Treasury, Commerce, State, and Defense, the U.S. Trade Representative, and the Council of Economic Advisers.

That this committee now reviews certain proposed mergers and acquisitions, but that it is a very targeted review; that certain legal remedies do exist which are available to protect our national security; but that the problem with the Exon amendment is that it is considerably broader than the CFIUS process.

For one thing, the investigation can be initiated by any agency in the Federal Government. So there is a wide-open invitation for anybody to forum shop at any agency that they feel warm toward.

Second, instead of being narrowly targeted to acquisitions and mergers and technology transfers and the like which have security implications, this Exon amendment relates in addition to friendly mergers, to joint ventures, to licensing agreements with no national security implications at all.

In fact, the President would be instructed to examine the impact of foreign control on the economic welfare of individual domestic industries, on any substantial unemployment, decrease in government revenues, loss of skills or investment or other serious effects resulting from the control of such industries by foreign citizens.

So that, instead of being narrowly targeted, this would be very broad-based. It could be—it would create a process that would be put in place by any agency head in the Federal Government.

It would create tremendous uncertainty with respect to even routine business transactions between the United States and other

countries. Even routine joint ventures, even routine licensing agreements, would be susceptible to a possible 45 day investigation.

Therefore it is my understanding of your testimony that the results of this is that it would have a chilling effect on international capital flows, and because of the fact that the United States now is a debtor country, because we have become hooked on foreign capital for our own economic growth, this amendment could put us in peril.

Now, that is a long statement, but do you agree or disagree with that?

The CHAIRMAN. Say "I agree."

Secretary BALDRIGE. I agree.

Senator DANFORTH. Thank you.

Secretary BALDRIGE. I would like to add, it distresses me to disagree with my fellow Nebraskan, Senator Exon, but I agree with Senator Danforth.

Senator DANFORTH. Is that basically the substance of your position?

Secretary BALDRIGE. That is true. That is put better than I could possibly have done it.

Senator DANFORTH. Well, do you view this as a serious matter, Mr. Secretary?

Secretary BALDRIGE. Oh, yes.

Senator DANFORTH. Or is this just Congress messing around and no real harm done?

Secretary BALDRIGE. I do not mean to imply by my levity that it is not serious. It is very serious, because we are now talking about the United States trying to take the lead in all kinds of trade, free trade, GATT kinds of policy. We need a new GATT. Everybody is in favor of that.

As I mentioned in the beginning, trade is investment today, investment is trade. You cannot have one without the other.

We do not want to dry up or chill, whatever words you want to use, incipient investment in the United States. We need it. It does us good, as well as whoever the investor is.

It is American jobs. It is 3 million Americans are working as a result of foreign investment today.

Senator DANFORTH. Are you familiar with FIRA, the Canadian process?

Secretary BALDRIGE. I am too familiar with that law.

Senator DANFORTH. Has it not been the policy of the United States to oppose the concept of FIRA vigorously?

Secretary BALDRIGE. We have opposed the concept of FIRA, because that is a Foreign Investment Review Act in Canada. That was not a question of chilling investment. That put U.S. investment in a deep freeze and slowed it way down.

The Canadians have changed. They have seen what happened and they have changed that law substantially. We did a lot of urging on them to change that.

We should not turn around and do the same thing in the United States as we were urging other countries not to do. We have done the same thing in Mexico. They have laws and regulations that prohibit certain kinds of investment or only up to a certain point. The same thing in Brazil.

We have gone around the world trying to open up investment policies and call for national treatment, right of establishment, and all of those lovely GATT phrases. And I think it would be a very serious thing if we went down the same road ourselves. It would be a real reversal of that policy.

Senator DANFORTH. Would it undercut our bargaining position?

Secretary BALDRIGE. Definitely.

Senator DANFORTH. Is removal of investment restrictions one of the principles that we are trying to advocate at the Uruguay Round?

Secretary BALDRIGE. Yes, one of our priorities.

Senator DANFORTH. Thank you, Mr. Chairman.

The CHAIRMAN. Very good.

The Secretary has been trying to make another schedule at 10:30 and we have five Senators. We do not have a clock, but you all be considering it.

Senator Breaux.

Senator BREAUX. Senator Exon was here before me.

The CHAIRMAN. How about you, Senator Kassebaum?

Senator KASSEBAUM. I will not be bashful. I have a question regarding the Hart-Scott-Rodino legislation, Mr. Secretary, which, as you know, requires a corporation having $15 million in stock to file with the SEC or the Justice Department, and then an antitrust review is made.

And there has been a loophole regarding partnerships which has now been closed, I think wisely. There has been evidence that that has caused in no way any slowdown in mergers or acquisitions, that that has not had a chilling effect.

Why would a national security review be any different than an antitrust review?

Secretary BALDRIGE. I think most countries have some kind of antitrust laws. We have never objected to them as a matter of policy.

The Hart-Scott-Rodino Act to the best of my knowledge, those figures are not released publicly. The ability to, yes, follow the antitrust laws, every country has some form of those, but not to have to disclose the dollar amount, as called for in, for instance, the Brian or the Chiles amendment, and make some of those other disclosures that businessmen feel sometimes is giving away a competitive advantage. It does have a chilling effect.

One of the difficult points we are facing, do not forget, is what is national security? How do you define that? Just the fact that we are changing the present procedure is enough to throw considerable doubt among potential investors. And I think our job is to clear that doubt up, not to make it worse.

Senator KASSEBAUM. Well, I thought that you had and the Defense Department had a list of national security concerns. Is there not already readily available such a determination?

Secretary BALDRIGE. For use in the inter-agency process we call CFIUS, the Committee on Foreign Investment in the United States, we do not have a specific list, to my knowledge anyway, the Commerce Department does not, of what we would call specific—we may have some specific cases we know about.

But the general guidelines for CFIUS are being looked at now by a group headed by the NSC, which Commerce, Treasury, and so forth are on. They have had a couple meetings. I do not know what will come out of that.

But that will be an attempt to make a policy that is somewhat more, oh, at least comprehensive enough so people can understand it better. Less of an ad hoc; it will be more regular and less ad hoc.

Senator KASSEBAUM. You mentioned that most countries have an antitrust review process and that is accepted and ackowledged.

Senator Danforth asked about Canada. Is it not true that Great Britain as well has a national security concern and a similar type of review process?

Secretary BALDRIGE. Yes, and it is true that Japan does, too. No, I did not mean that we were the only one. But Hart-Scott-Rodino is limited to antitrust.

Senator KASSEBAUM. Yes, I know it is. But I am just saying, perhaps it should be broadened to include national security. Perhaps it would not be so far-fetched to wonder why, if antitrust has not had any real effect——

Secretary BALDRIGE. Well, if I could point out another difference, Senator. Hart-Scott-Rodino applies to United States and foreign firms, and what you are talking about would apply just to foreign firms.

And yes, we have to look at national security if it comes up. But we have. Why duplicate a system that we have now that is working well?

It has not been abused. You have not heard any complaints about national security investment going off the track somehow in the United States. I do not understand the concern when nothing untoward has happened.

Senator KASSEBAUM. Well, I would share, I think we all do, the desire to be responsible in this. Foreign investment is important.

I personally think, however, whether it is takeovers, particularly foreign investment takeovers in sensitive industries, and a very disruptive situation that can evolve from hostile takeovers, that it is at least something that we should give very careful consideration to.

I think we have seen already very unproductive capital drains and I think one could argue security concerns by situations that have developed.

Secretary BALDRIGE. Well, if I could make two points there, Senator. One is on takeovers, unfriendly takeovers. Believe me, every U.S. company that is an object of a takeover by somebody abroad comes to Washington with their concerns if they think it is national security.

Now, if you are just talking about an unfriendly takeover by a foreign country—foreign company, where national security is not involved, to have any review of those absent that particular potential problem I think would be a giant step backward.

I mean, that is like the government or some agency of the government trying to put themselves in the place of the marketplace. Some of those are ill-advised, I would agree. Some work out superbly well. But the batting record of the Commerce Department or Treasury or anybody else trying to say, well, this is a good hostile

takeover, this is a bad one, it simply would not work. It boggles my mind.

Senator KASSEBAUM. Well, I would agree with you. I think that we were talking about, though, just those areas which do have, I think, very direct national security concerns.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Mr. Secretary, I must say that I fail to comprehend your appearing here today and the shaking of the timbers by the Senator from Missouri on the Exon amendment, which is only trying to give you as the Secretary of Commerce or those who succeed you, and the President of the United States, some discretionary authority to deal with a problem that is very real, whether, to use your words, nothing untoward has happened up until this time.

I think that we have got to be able to look a little bit further ahead to see what might happen in the future. Certainly we all know and realize that America's competitiveness around the world has been devastated. I for one want to do something about it, rather than rushing about chasing windmills as to what we are going to do about preventing foreign capital from coming into the United States.

With the shape of much of our economy today, I recognize that we are going to rely to a considerable extent on foreign investment coming into the United States.

So the amendment that I have offered is such a mild one that I think there must be something else behind the attack that has been launched against it, despite the fact that I think it is generally supported by people on both sides of the aisle at this particular committee.

Do you understand that the Exon amendment says and says only that nothing must happen, that this is only a tool to place in your hands, and if you agree with the President of the United States, to do something in case a national security matter would present itself?

And certainly, I do appreciate the fact that you joined with several of us ultimately against the Fujitsu semiconductor problem that we had a few months ago.

I notice in your testimony that you did not read, but have submitted for the record, that you say: "On March 25th, 1987, I testified before the Finance Committee and stated that:

> We need to define our policy on foreign direct investment as it relates to strategic resources. We are not complacent about the mechanisms already in place. If they can be improved, that should happen.

That is what the Exon amendment does. You go on to say:

> We need to be able to quickly size up a proposed investment in terms of its effects on our national interest. . . .

Now, Mr. Secretary, do you understand that the Exon amendment is not mandatory, it is strictly discretionary? It does what you say is necessary in your prepared statement to the committee this morning, and yet you are opposed to it and I want to know why.

Secretary BALDRIGE. Well, I am opposed to it, Senator, because it is an example of vast overkill. It is not necessary, and other steps have been taken to correct any differences I might have had with the way the present system is working.

CFIUS, as I mentioned earlier, is now—or the policy that CFIUS should endorse is now being reviewed by the Administration under the leadership of the National Security Council to have a definition or at least put some boundaries around what we mean when we are talking about national security.

Senator EXON. Well, Mr. Secretary, the foreign investment matter that you are referring to has a much broader phrase in it, in the opinion of this Senator, than the narrowly defined phrase in the Exon amendment. And I quote from the May 9, 1975, executive order, item 3 on page 25733:

> The duty of the council is to review investments in the United States which, in the judgment of the committee, might have major implications for United States national interests.

Now, that is a very, very broad term. Mine is much more tightly drawn than that. I remain convinced that you feel that I am trying to block foreign investment. I am not trying to block foreign investment.

I think it is vitally necessary. In some of our industries we are going to rely on foreign investments, just like we are relying on foreigners to finance our borrowings and national debt today.

Secretary BALDRIGE. Senator, if I may say so, I do not think you are trying to block investment. But I am trying to point out from some 30 years of experience in international business before I came down here to Washington that this amendment would have that effect.

Now, let me just bring up a couple of points that are in this amendment. In the case of an attempt by a foreign person to gain control of a United States industry, the President should consider the following:

The economic welfare of individual industries. Now, that could mean anything to anybody, but to me it would mean that we would have to be concerned about foreign competition coming into the United States, and that is not the right way for us to compete.

Second, the President shall consider any substantial unemployment. Well, how do you know? How do you talk about—what is substantial? How do you know that the unemployment is not necessary in order to make the industry competitive and end up with more employment in total after it does become competitive.

Any decrease in government revenues. That is like saying if you are going to get less taxes we should not do it. That is not national treatment. That is against everything we have been preaching around the world for Democratic and Republican Administrations both.

The President shall consider the loss of skills or investment. Now, that is like a hole that you could drive a couple of trucks through, Senator. Loss of skills—you cannot tell from one of these investments in the United States specifically five years down the road whether it is going to be a great gain of skills to the United States or in some cases a loss.

But for us to deny the opportunity for foreign investment based on that is really a major, major step backwards as far as an open investment policy.

Senator EXON. Well, Mr. Secretary, the record will show, and we can read it and study it later. I just want to emphasize the fact that, from the statement you have just made, you almost unknowingly, I think, have endorsed the Exon proposal.

Secretary BALDRIGE. Excuse me. I did not mean to, believe me.

Senator EXON. I did not think you did.

The word "consider" is through this, Mr. Secretary, all the way. All that the Exon amendment does is say that if you, as the Secretary of Commerce, want to use this tool, you can. You can consider using this tool. You do not have to.

I have confidence that you as Secretary of Commerce or the Secretary of Commerce that will follow you, and the President of the United States now and in the future, would not go off on witch hunts. I assumed I would have your support because of the quotations that I made from your March 15th testimony to the Finance Committee, which you included in your message this morning.

It is voluntary. It is not mandated. If you do not want to do this, there is nothing in this law that forces you to do it. It really says it might be a good idea for you to consider this, and I would hope that you would reconsider your opposition, which I suspect is not well founded, despite the fact that I recognize that you have considerable experience in this.

All that I am saying and trying to do with this amendment is to give the Administration some tools to act if they think a merger or a takeover is not in the interests, primarily military, of the United States of America.

You did intervene, did you not, in the Fujitsu case?

Secretary BALDRIGE. I expressed some concerns.

Senator EXON. You voluntarily expressed some concerns?

Secretary BALDRIGE. Well, I felt there was a national security aspect there.

Senator EXON. Did you think that there was any national security involved in the Goodyear takeover by, in this case, a British subject?

Secretary BALDRIGE. No.

Senator EXON. And you did not act?

Secretary BALDRIGE. I did not act.

Senator EXON. Then you would be in identically the same place, I suggest, if the Exon amendment were part of the law. You would not have to act, but it would give you an additional tool to act if you wanted to.

Secretary BALDRIGE. Senator, I have nothing further to say except what I have already said. Those points that I mentioned would have a chilling effect on trade, and for us to have the power and then not use it, I think that, although you are a better politician than I am, I still think it is politically naive to think that any Secretary of Commerce would not be lobbied by every company under the sun in the U.S. when somebody else was trying to take them over if they did not like it, and use these very general, broad areas that you could hang anyone up on.

Senator EXON. I am lobbied all the time, Mr. Secretary, by my constituents back home on a whole variety of issues. Sometimes I go along with them and sometimes I do not. That is part of standing up and taking the heat.

I guess I have used my time.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman.

Thank you, Mr. Secretary, for being up here. There are some of us who are trying to allow you not to have to come up here and spend all this valuable time with us, who would rather go ahead with the legislation. But Senator Danforth wanted you to come up here and spend this time with us.

Secretary BALDRIGE. Well, thanks a lot, Senator Danforth. I am supposed to catch the 11:00 o'clock shuttle.

Senator BREAUX. I will be very brief.

I get a real kick out of the reason, Mr. Chairman, why they are not supporting the legislation. What we are hearing about is this chilling effect. Do not do this because we are going to have a big chill out there and people are not going to want to invest in the United States companies.

Well, I suggest that there is a lot more than a chill out there in the real world. There is an ice storm out there. I mean, our own U.S. Trade Representative has a 100 page listing here of countries from A to Z, from Argentina to Zimbabwe and everything in between. And every one of them that is on this list from our own Trade Representative has some kind of requirement that when a foreign country invests in Argentina to Zimbabwe to France to Canada to Australia to the OPEC nations, that there be somebody in their government to take a look at it from a national security standpoint, or from a cultural standpoint, or from an economic standpoint.

And yet we are saying that we are not going to have some authority for you to require a look at something that is important to the national security.

I would suggest that it has not had a chilling effect on U.S. interests when we want to invest in all of these countries. Are we not willing to have a reciprocal trade policy that even goes so far as to give you the authority to look at something that is important to the national security?

Secretary BALDRIGE. Senator, we have the authority set up in the administration now to look at national security. We have that in CFIUS.

Senator BREAUX. You made that point very clear, that you do not think you need any additional authority.

Secretary BALDRIGE. And I think we do not need any authority.

And the second point I would make is that I recognize the fact that a lot of countries around the world have more stringent investment regulations than we do.

Senator BREAUX. They all do.

Secretary BALDRIGE. All right, let me say they all do, maybe. Let me just use that phrase. Now, it is in our self-interest, Senator, to go the way of having them open up their investment, because we have funds to invest. We have been one of the largest investors,

still are abroad, historically and traditionally, and will continue to be so.

It is in our self-interest to open those countries up to our investment, rather than to take the lead in going backward on it.

Senator BREAUX. I totally agree with that point. But Senator Exon's bill does not do what these other countries do on their books. It does not mandate it. It merely says, Mr. Secretary, you have the authority to have a hearing and you have the authority to exercise some additional authority if you find that our national security is at question in this area.

We see in the paper today, the Oil Daily yesterday, "Saudis seeking bigger role in U.S. refining interests."

Let me ask you the question. Suppose a group of OPEC nations—Iran, Iraq, Kuwait, Saudi Arabia—decided that they were going to buy every single U.S. oil refinery in the United States. Would you think that would be a national security concern?

Secretary BALDRIGE. Yes, we would have to take a look at it.

Senator BREAUX. Okay. Now, if you took a look and you saw that they had embarked upon a program to buy them all, which they could certainly afford to do, what would your authority be to stop that type of takeover?

Secretary BALDRIGE. International—IEEPA, it is called, International Economic Emergency Powers Authority. The President could stop something like that if he felt it was an unusual and extraordinary——

Senator BREAUX. Would you have the authority to have a hearing?

Secretary BALDRIGE. Yes. The President can do anything he wants.

Senator BREAUX. Now, how does that differ from what Senator Exon is trying to legislate?

Secretary BALDRIGE. We have already got it. We have already got that authority, Senator. Why layer on another one? That is like my mother telling me to take some castor oil when I was a kid, that I did not want to take and I did not need, just because she thought it was good for me.

This is not good.

Senator BREAUX. Mr. Secretary, the difference, what you are saying to this is that when you find that an American company feels that their takeover by some other foreign government is causing them problems, they can come to you and make a complaint.

I would suggest that that is letting a corporate board of directors with an economic interest, a personal economic interest, determine whether their takeover is good for the national security of the United States.

The only thing Senator Exon wants to do is to give you that authority.

Secretary BALDRIGE. Senator, I do not want the authority, and the reason I do not is because I have spent 6 years in trade negotiations down here, understand most of the trade policies and why they have come about in countries abroad, and I spent over 25 years in international trade before I came down here.

When I see words like the President shall consider the economic welfare of individual industries, that sends a shutter up anybody's spine trying to invest here from abroad.

Senator BREAUX. It has not had that effect on U.S. companies investing overseas.

Secretary BALDRIGE. Any decrease in Government revenues, any decrease in taxes, or any loss of skills or investment—that really is going to bother every single investor trying to come in here because it is so broad.

Senator BREAUX. That is not correct, Mr. Secretary. If you think that those are not important considerations, you can close the books, slam the door, and walk away from it. You are not required to have one single investigation under the Exon amendment. You are just given the authority to do it when you think it is important.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Just quickly, Mr. Chairman. I will confess that this is not as easy a subject for me as most of, apparently all, of the members on my side of the aisle, Mr. Secretary.

I do worry about the so-called chilling effect. I do worry about the broadness of the language. I understand it is discretionary, but I also understand that the discretion can be heavily exercised or there could be a lot of pressure to use discretion.

On the other hand, I am troubled by the fact that there does not appear to be a clear way to do this if there is a national security interest.

Now, you have indicated, but I have not heard you really say definitively, in the case of the Fujitsu-Fairchild matter, it died through jawboning. It did not die through legal action. Fujitsu pulled back.

If they had not pulled back and if they had wanted to proceed, what legal action could the President have used to stop the deal under the present circumstances?

Secretary BALDRIGE. In the first place, it is difficult to pin down any one specific acquisition, but let me try it in this case. Fujitsu-Fairchild was still in the middle of an antitrust review. They did not know how that was going to come out.

I mean, I do not know specifically why they withdrew, but I am trying to conjecture as to the reasons they may have. There was no sign of how the antitrust review was going to come out.

The antitrust takes enough time for normal review so that the U.S. Government could have decided through the CFIUS method whether there were any other reasons, leaving antitrust to one side, national security or so forth, that it should be good policy to block the merger.

Once that was decided, the ways of doing it are there in our opinion. There is the International Emergency Economic Powers Act. There are the defense industrial security regs, which get into strict national security and whether you have to dispose of a part of your company that is selling, in a sense—I mean, you do not want it controlled by a foreign country because of national security, and they would have to sell out that part of it and get rid of it that way.

On top of that, there are regular Export Administration act controls on a company that is selling abroad. We have the Trading with the Enemy Act. We have got sectoral controls limiting——

Senator ROCKEFELLER. Mr. Secretary, I understand the menu, and you have referred to that. You keep talking about the options. I guess maybe you could just submit this before our markup so that we can know what the answer would have been.

I think they stopped doing it because there was clearly massive public pressure, American pressure building up against it. I think it was in Japan's interest at that particular time and would be now not to have proceeded with that particular arrangement, and I think that is why it happened.

I do not think it was on any other reason, including antitrust.

In any event, if they had proceeded what would have been the legal, not the jawboning but the legal, action that would have been used amongst those? Maybe two, maybe two or three of them would have been used. But what legal action would have been used to have stopped them from doing it if it was determined by the administration that they wanted to stop it for the purpose of national security?

Secretary BALDRIGE. I have mentioned the two most applicable. I am not a lawyer, so this has to be an estimate. I would say the two most applicable would be IEEPA, the International Emergency Economic Powers Act—the President, in the case of anything of an unusual threat to security, can take very strong actions on his own—or the Defense Industrial Security regulations, where they can force companies to get out of certain businesses if they are foreign-owned that would affect our national security.

Senator ROCKEFELLER. I will just take one more. The Goodyear Tire folks are testifying here in support of the amendment, and that interests me. In reading their testimony, which I do not think you have, they are in chemicals and a variety of other things, synthetic rubbers, fabrics, adhesives.

Is one of your concerns that, if national security is bandied about here, and I assume that Goodyear thinks—they are in support of the Exon amendment because perhaps they come under the Exon amendment—that you could get in fact shoe people, textile people, or other people coming in saying they would be covered?

Secretary BALDRIGE. You have got it, Senator. You have got it. Everybody in the U.S.A. is in a national security business. Making buttons, you need them on soldiers' uniforms. Making shoes, soldiers have got to walk. You would have the line stretched all the way from here down to my office.

And further, if I may make one more point, this idea that seems to be so popular in the committee of giving the administration authority that they do not want is the same kind of talk I heard in Canada, where for five years we were urging them to get rid of the Foreign Investment Review Act. They would always say: "Well, we are going to keep the Act, but we will not use it, or we will only use it in certain cases and so forth."

That still had a very chilling effect on U.S. investment up there, and I think it is just bad policy.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Wilson.

Senator WILSON. Thank you, Mr. Chairman.

I must say to my friend the Secretary that I share the blame with Senator Danforth and one or two others for urging that you be present.

Let me ask you a question that has been touched on by your testimony, but I do not think has been fully explored. Senator Rockefeller was constrained by time, I think, from not going forward.

But you have mentioned now that you think there are adequate powers currently available to the administration that allow them to exercise discretion without producing this chilling effect on foreign investment that you fear. And you have cited specifically the Defense Production Act and also the International Emergency Economic Powers.

My understanding, though, is that the Defense Production Act allows the President to allocate resources, but it really does not allow him to decide who will own a business; and that the International Emergency Economic Powers Act will only allow the President to block a foreign acquisition in the event of his making what is virtually the equivalent of a declaration of hostilities against the government of the acquirer company.

Now, that really does not seem to afford the kind of opportunity for an administration to intervene in a timely way. It seems to me that you are left pretty much to jawboning.

And you did that effectively, I think, in the Fujitsu case. But how many times has CFIUS, the Committee on Foreign Investment, taken action?

Secretary BALDRIGE. Senator, you are trying to kill a gnat with a blunderbuss. There have been no cases where we have run into national security problems that have not been solved. There has not been one. You cannot name one.

So I do not know what everybody is getting so concerned about. The present system we have has been working.

Now, I would disagree—again, I am not a lawyer. But it was not the Defense Production Act I was referring to. It was the defense regulations on sensitive technology, sensitive manufacturing areas, products, and so forth that a foreign owner may have to divest himself of, that part of a company, if Defense so decided, which I think is very adequate.

So I do not see where the problem is. We have not run into any problem that we cannot handle yet, and I do not foresee any coming down the road that we cannot handle.

On the other hand, if we put this through we are going to have the equivalent of what we went to the mat with the Canadians on for 4 years, and it did have an effect on lack of investment in that country.

We need foreign investment in this country. It is good for American workers.

Senator WILSON. Yes, well, that is not the argument, if I may. Since we are under time constraints, let me just say that that is not the argument. We all will stipulate that foreign investment has been useful and it has put people to work.

And the effort here is not to chill that, and you can say, well, that is not your intention but that is the effect. I would say that I

think the point is well taken that foreign practices have been infinitely more restrictive than anything that is being proposed here, and it has not chilled enormously even our investment in those countries. And we are taking a hell of a lot greater risk.

Secretary BALDRIGE. In Canada it certainly did, and that was the latest example.

Senator WILSON. Well, but let me say that in Canada they are acting in a way that is far afield from what is proposed by this amendment. It is far beyond that.

Secretary BALDRIGE. Well, Canada also, Senator, has 50 percent of their manufacturing controlled by outsiders and higher than 50 percent of their energy industry.

You know what we have got controlled by foreigners in the United States? It is around 1 or 2 percent.

Senator WILSON. All right, but that has no bearing on the Canadians' objection to things like cultural sovereignty, to publishing. And they are involved, I think, in a way that is simply not contemplated by this amendment.

Let me just ask you this question. Do you think that the Exon amendment would undercut our trade negotiating position?

Secretary BALDRIGE. Yes, I do.

Senator WILSON. I think you would also agree that you do not get anything for nothing in a trade negotiation. So what is it that you would propose that we give up to our trading partners in the next GATT round to reduce their foreign investment barriers?

You keep saying that we ought to be going in the other direction and tearing down these barriers. Well, as a general principle we all agree. But as it relates to national security, I think they all are going to have a similar provision and they all do.

Secretary BALDRIGE. That is part—like any international negotiation that covers such a broad range, you have to put everything on the table and then try and figure it out. We are going through the same thing with the free trade arrangement with Canada, free trade agreement. Investment is on the table there. I do not know what each side is going to give up in order to get to the final denouement.

But it is the same thing at the GATT. I cannot say specifically. I probably would not if I could, because that is part of our negotiating strategy. But we are trying—we would be hoping not to give up anything for that, because we have had some success in convincing the Indians, the Mexicans, the Brazilians to modify, not as much as we like but to modify, their very stringent investment requirements in their country.

And for us to start to turn around and go the other way would, you know, would cost us a great deal of credibility and leadership.

Senator, may I ask a question as a friend? I really have to catch the 11 o'clock shuttle to give a speech. Now, I will of course stay and stay all afternoon with this committee if you think it is important enough. But I would make that request if I could.

The CHAIRMAN. How about Senator Kasten.

Senator KASTEN. Mr. Chairman, I think that we ought to try to accommodate the Secretary.

But my understanding is that this proposal would allow investigations of not only possible takeovers and mergers, but also joint

ventures and licensing agreements. Maybe I can address those same questions to the author of the amendment.

But I have got some concerns in the area that goes beyond the takeovers and mergers, into joint ventures, licensing agreements. But I think that we can—I will submit those questions for the Secretary and we can discuss those issues in the committee.

The CHAIRMAN. Thank you, Mr. Secretary. We appreciate your appearance here.

Secretary BALDRIGE. Well, I thank this committee very much for letting me go.

[The statement follows:]

STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY, DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Committee: I am glad to have this opportunity to discuss the policies of the United States regarding foreign direct investment, and how those policies relate to our national security. As you know, this is a topic in which I have a personal interest.

Let me start off by restating my support for our policy on foreign investment. It's an open policy—the most open investment policy in the world—based on the fundamental premise that the global economy functions best without governmental attempts to influence capital and investment flows by setting up barriers and taking other distortive measures.

International investment plays a vital role in the world economy. It can be a catalyst for growth, introduce new technology and management skills, expand employment, and improve productivity. Its an important source of capital, of course, and it can stimulate international trade by keeping the cost of capital down and encouraging countries to specialize in goods and services where they're most efficient.

These benefits accrue to the United States, of course, but it's important to keep in mind that they accrue to any country that follows an open investment policy, and particularly to developing countries that need outside captial to build up their productive capacity. By doing so they can earn cash with which to purchase our exports and finance their debts.

So open investment works to the advantage of every player, Mr. Chairman, and we are strongly committed to this policy. This Administration has been working hard to remove barriers to investment that are erected or maintained by our trading partners. We are pursuing free access to investments in our negotiations with Canada, and we're committed to keeping this item on the front burner in the Uruguay Round of GATT negotiations. We would strongly oppose any measure that would send a signal to our trading partners that the United States is backing away from its traditional position of leadership on this issue.

Now, having said that, let me also state that, as in any broad policy, there are bound to be exceptions. We know that, the President's policy statement recognizes that, and we know that such cases need the attention of policy makers. We must be concerned whenever a foreign investment could have implications for our national security.

I was in the forefront of concern on Fairchild-Fujitsu. I believed then, and I believe now, that the longer-term impacts of investments like that need to be examined.

One must look at proposed transactions in the larger context of their implications for our national security. Whether a transaction would result in a direct transfer of some critical, defense-related technology is a basic question.

On March 25, 1987, I testified before the Finance Committee and stated that, "We need to define our policy on foreign direct investment as it relates to strategic resources." We are not complacent about the mechanisms already in place. If they can be improved, that should happen. We need to be able to quickly size up a proposed investment in terms of its effects on our national interest and send a recommendation promptly to the President if action needs to be taken. Indeed, because of the way the recent Fairchild-Fujitsu case developed, the Administration itself began work to examine the issues relating to possible criteria for evaluating any national security exceptions to our open investment policy.

We do have a number of tools at our dispoal to deal with situations in which the national interest is perceived to be an issue.

First, for example, we have a standing Committee on Foreign Investment in the United States ("CFIUS"). CFIUS was formed in 1975 by Presidential Executive

Order 11858. Its members include the Departments of the Treasury, Commerce, State and Defense, the U.S. Trade Representative and the Council of Economic Advisors. One of CFIUS' principal functions is to "review investments in the United States which, in its judgment, might have major implications for United States national interests" (quoting from the Executive Order).

CFIUS considers proposed transactions that come to the attention of its members through internal monitoring, industry contacts or as a result of information provided by foreign governments.

The Committee does not have the authority to block a deal, but it can quickly analyze its potential effects, and, where appropriate, bring it to the attention of the Economic Policy Council. If the matter justifies further action, a wide range of legal options is available to ensure that the proposed transaction is in the national interest.

For example, the applicability of antitrust laws does not turn on whether an ivestor is foreign or domestic, private or governmental. If a proposed action would have anticompetitive effects—that is, if an acquisition would tend substantially to lessen competition or create a monopoly—we can act to block it or suggest changes that remove the problem.

If foreign access to classified technology is an issue (for example, if the target company has government contracts dealing with classified matters), the Department of Defense can require restructuring so that any units doing classified work be separately constituted, with an all-U.S. Board of Directors, as a condition of continued work. Or they can simply withdraw the security clearance.

Similarly, if there is a possibility of valuable technology being exported or diverted to Eastern bloc countries, our Export Control laws come into play regardless of who the exporter is. And under the International Emergency Economic Powers Act, the President may block foreign acquisition of a U.S. company or compel the divestiture of foreign interests in an acquired domestic company, if he determines that there is an extraordinary threat to the U.S. national security, foreign policy, or economy.

The Administration stands ready to employ these tools if necessary.

Now, looking at the proposal in question, Mr. Chairman, I can see that it largely duplicates the system we now have, and where it makes changes they aren't good ones.

First, it provides that, upon request of another agency head, the Secretary of Commerce has to do an investigation, or he can start an investigation himself. That duplicates what the CFIUS now does. We are represented on the CFIUS, of course, and any concerns I have—or any other agency has—can be adequately addressed through that process.

Second, the proposal requires that these studies be done in 45 days. That's just not a reasonable requirement, where in many cases there may be govenment-to-government consultations on a proposal, or the final structure of a transaction is slow to evolve. A time limit like that may well *delay* the start of an investigation, to avoid the necessity of precipitous or premature action in a given situation.

Third, the proposal forces Presidential consideration of every acquisition that gets investigated. This is unnecessary. The CFIUS has referred for Cabinet-level consideration only the smallest fraction of the cases that are brought to its attention. The overwhelming majority simply do not merit a higher level of review. Why saddle the President with this additional requirement?

Finally, the proposal contains criteria for Presidential determinations that are absolutely inconsistent with our overall investment policy and would be an extremely mischievous precedent. The broad criteria of economic welfare, job losses, government revenues and "loss of skills" (whatever that implies) is bad economics, bad policy and fraught with political risk. No investor could come here unless they were prepared to discuss how many jobs they were going to create—or save, and what tax revenues they could generate. Any discussion on that level is just not an acceptable approach to investment issues. It's the type of government intervention we have argued against internationally, because it hurts our own direct investors—who have as much at stake abroad as foreign direct investors have here in the United States. Such a "national benefits" test would violate our own policy and undercut our important investment initiative in the GATT Round and our ongoing talks with Canada. It would also send a chilling message to foreign investors that their capital, technology and know-how, and management skills are not welcome.

So, Mr. Chairman, we oppose this proposal. The United States is an international leader on investment issues because we understand the tremendous benefits that the free flow of capital brings to our economy in new products, new services and new jobs. Let's not give up that leadership. It has served us well for 200 years.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Robert Mercer, Chairman of the Board of Goodyear, and Joseph L. Parkinson of Micron Technology in the first panel here. We ask you to please come to——

Senator EXON. Mr. Chairman, while they come up, could I answer the question posed by the Senator from Wisconsin?

The CHAIRMAN. By all means.

Senator EXON. If someone is looking for a witch hunt and if you think that the Secretary of Commerce would in a mischievous fashion interpret the Exon amendment, I suppose it could go into some of the areas that you have expressed some concern about, Senator Kasten.

I emphasize once again, this is merely an optional tool to place in the hands of the Secretary to do some things that, despite what he says, have not been done in the past. And with the attractiveness of many possible takeovers, I think many countries like Japan, especially with the value of the dollar today, are looking at many of these industries that are listed in a Friday, May 30, USA Today article entitled "New takeover cycle becomes evident."

It is only a tool. And I would ask that this list be entered into the record as part of the testimony today.

[The material referred to follows:]

TOP TAKEOVER PICKS

Here's a list of 30 companies that Wall Street pros rate as major takeover or restructuring candidates.

Company:

Amerada Hess Corp.
Bally Manufacturing Corp.
Bank Bldg. & Equip. Corp. of Amer.
Bergen Brunswig Corp.
Burlington Northern Inc.
Calny Inc.
CBI Industries Inc.
Clark Equipment
CPC International Inc.
Frost & Sullivan Inc.
General Dynamics Corp.
Greyhound Corp.
E.F. Hutton Group Inc.
IC Industries Inc.
International Technology Corp.
Litton Industries Inc.
Macmillan Inc.
McKesson Corp.
Morse Shoe Inc.
Outboard Marine Corp.
Phillips Petroleum Co.
A.H. Robins Co.
Rorer Group Inc.
L.F. Rothschild
Salomon Bros. Inc.
Santa Fe Southern Pacific Corp.
Singer Co.
Sorg Inc.
Trinity Industries Inc.
Unocal Corp.

Senator KASTEN. Would the Senator yield? I just wanted to, if I could, get this on the record as my concern. And I want to work with the Senator to try to find out what the answer is.

You are primarily interested, as I understand it, in possible takeovers and mergers. My understanding of the amendment——

Senator EXON. It would include joint ventures and licensing also.

Senator KASTEN. What I am concerned about and what I would like to look carefully and see how this would affect the kind of merger or, I should say, joint venture between GM and Saturn, for example, or between GE engines and Airbus.

I just do not know who we would be investigating and how it would be. And my point is that I do not want anything in this amendment to stop that kind of what I believe is synergistic joint ventures.

Likewise, I have had some experience in Wisconsin with GE Medical Systems in which, by joining with a foreign company, in this case I believe it was a Japanese company, they were able to penetrate the Japanese market. By forming a joint venture, they had a GE-Japanese company, they then sold their technology in Japan.

I am just not sure how your amendment would affect these particular areas, and I would like to work with you in terms of trying to determine the answers to these questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The committee will also include in the record two letters here, one from the United States Trade Representative and one from Mr. Volcker of the Federal Reserve System. They will be included in the hearing record.

Senator DANFORTH. Mr. Chairman, could we also include a letter from Secretary Baker?

The CHAIRMAN. Yes, that will be included also.

Mr. Mercer, we would be glad to hear from you.

STATEMENTS OF ROBERT MERCER, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, GOODYEAR TIRE & RUBBER CO.; AND JOSEPH L. PARKINSON, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, MICRON TECHNOLOGY, INC.

Mr. MERCER. Thank you, Mr. Chairman, and members of the committee.

I am Robert E. Mercer, Chairman and Chief Executive Officer of the Goodyear Tire & Rubber Co.

Because foreign interests spearheaded a move to take control of Goodyear, I welcome this opportunity to offer my opinions on the need for an adequate mechanism to assure a prompt and timely assessment of attempted takeovers and similar activities by foreign individuals, companies, or, yes, governments in terms of the impact on the national security and the essential commerce of the United States.

Now, I believe I can speak for a cross-section of the nation's business community and perhaps for American labor in saying that there is growing concern over this issue. I compliment you on your vigilance and your responsiveness to this threat to America's industrial base, its technology, its economy, and its ability to produce the materials that could well be needed in some future emergency, military or otherwise.

The CHAIRMAN. Mr. Mercer, we would be glad, if you wish, we can include the statement in its entirety in the record and you can summarize it perhaps.

Mr. MERCER. If you will, please. I would enjoy reading it if anyone would like to hear it.

The CHAIRMAN. We have another panel. I am afraid some of my Senators might leave me. I am just trying to expedite so that we can really hear from you. But you go ahead and highlight it as you wish.

Mr. MERCER. All right. What I really wanted to say here is that we might wind up having to go to rent-a-plane or rent-a-tank serv-

ices if we do not have the ability of an industrial base in this country to do the kind of job that is needed in the event of an emergency.

Last fall we were attacked by an offshore Englishman, a knight in shining junk bonds, if you will, and we were unable to find anyone in this government who in fact could help us when we realized that our aerospace subsidiary was in jeopardy.

This knight, of course, declared that our management was entrenched and it was scornful of its obligations to shareholders, and all of the kind of doublespeak or raiderspeak, if you will, that goes along with these people.

Our new venture that was referred to in aerospace began in 1911, just 13 years after Goodyear was founded. Now, what I asked is was he really unaware of that or was he secretly salivating over the sophisticated computers, the F-15 flight simulators, the missile guidance systems, radar, and other hardware engineered and built for America's defense?

Would he have controlled these operations from Great Britain or from Lichtenstein, the Cayman Islands, or one of the other foreign links in the labyrinth of his limited partnership organization? Would he have sold them to another American company or perhaps peddled them to the highest bidder abroad?

And I have got a similar statement, of course, on our chemical business, when we got into synthetic rubber at the request of our Government during World War II. And it is an essential part of this economy and our defense mechanism.

We also have in place the first west to east oil pipeline, running from Santa Barbara to Texas, to provide a secure route of oil from the offshore California fields, as opposed to running that down past several Central American countries who are not all that happy with us and through a canal that we no longer own. This also would be in jeopardy.

Well, we had to close down three plants, cut employment by 4,000 jobs, and sell out several properties in order to finance the stock buyback necessary to keep our company intact.

Our aerospace subsidiary was sold to a defense contractor, Loral Corporation of New York, and it thus escaped the clutches of the knight and his band. But we have since lost a round to the British anyway, where in a project that started long before the attempted takeover Loral was in the bidding against a joint venture made up of Airship Industries of England and Westinghouse on a Navy contract—and that is our Navy—for construction of a prototype airship equipped with radar to detect missile attacks on surface ships.

The Loral Systems Group felt it had a leg up with near completion of an advanced airship which soon will join Goodyear's fleet. But we lost that, and we feel we lost that principally because of some political considerations, at least as I read this in the newspaper.

We lost one where we were low bidder and clearly the more competent of the two manufacturers.

Similar questions could be raised about proposals to award Israel a contract for wheels on U.S. tanks, to go to Germany for tank tracks or to France for tires on the Army's Hummer vehicle. In the case of the Navy blimp contract, I cannot help but speculate on

whether the jobs involved would be in Akron had Goodyear not been the intended prey of the English knight and had we not been forced to sell our aerospace group and our ensuing restructuring; but that is something we will never know.

I do know that while we were defending ourselves against the raid, a number of Congressmen and Senators were asking us about the possibility of militarily sensitive aerospace projects and information falling into foreign hands and about the possible fate of our synthetic rubber facilities upon which we and other members of our industry depend and about our natural rubber plantations abroad and the natural rubber stockpile.

We had no good answers, and the various agencies around Washington had no answers for us. The system of CFIUS that I hear about this morning was not very vociferous when we tried to approach our government with this concern. I think the Secretary echoed earlier that he just never considered the Goodyear takeover as a problem. I consider it to be a problem for this country, not just for my company.

So let me give you a parting thought that is fanciful but entirely possible under existing laws. If I were Khadafy, I would put a dozen Libyans in three-piece suits, send them to Wall Street, assign them to different American industries, bankroll them with junk bonds or petro dollars and watch them destroy America's industrial base without firing a shot.

Think about it.

[The statement follows:]

STATEMENT OF ROBERT E. MERCER

Mr Chairman and members of the committee, I am Robert E Mercer, chairman and chief executive officer of The Goodyear Tire & Rubber Company. Because foreign interests spearheaded a move to take control of Goodyear, I welcome this opportunity to offer my opinions on the need for an adequate mechanism to assure prompt and timely assessment of attempted takeovers and similar activities by foreign individuals, companies or, yes, governments in terms of the impact on the national security and the essential commerce of the United States.

I believe I can speak for a cross section of the nation's business community, and perhaps for American labor, in saying there is growing concern over this issue. I compliment you on your vigilance and your responsiveness to this threat to America's industrial base, its technology, its economy and its ability to produce the materials that could well be needed in some future emergency, military or otherwise.

I'm not being entirely facetious when I suggest that world political and economic scenarios and alliances in the future might make it difficult to rely on foreign rent-a-plane or rent-a-tank services in times of our own national need. But that's where we're heading.

Had Goodyear not succeeded in resisting the raid last fall, we could well have provided an ideal case history for the consequences of foreign control. The charge was led by a British financier whose trophies already included a knighthood bestowed by the Queen and the scalps of such American companies as the Grand Union grocery stores and Crown Zeilerbach and its extensive timberlands.

His raiding party included an Australian henchman and an American investment banking firm which served Goodyear up on a target list and was ready to ante up nearly $2 billion to the raiders in return for fees and future profits on the anticipated breakup of our company.

Reports were circulating at the time that the awesome Hanson Trust of England was waiting in the wings to see how the raiding activity went over with the American public and our government. That's the firm which recently confirmed it now has something like $6 billion to put into new acquisitions.

Why did the knight want Goodyear? In the doublespeak used by all raiders, he declared that our management was entrenched, scornful of its obligation to shareholders and "out of focus" for straying from our core business of tires into what he called such "new" ventures as aerospace, chemicals and the nation's first major West-East crude oil pipeline. Let's translate that doublespeak:

. . . Our "entrenched" management doesn't get the benefit of two or four year terms in office. It is voted on once a year by our shareholders, based on our performance. In addition, yours truly also serves by the grace of the board of directors who render a judgment every quarter, sometimes more often. If that's entrenched, what's it take to be twitchy?

. . . Our "new venture" in aerospace began in 1911, just 13 years after Goodyear was founded. Was the knight really unaware of that? Or was he secretly salivating over the sophisticated computers, F-15 flight simulators, missile guidance systems, radar and other hardware engineered and built for America's defense?

Would he have controlled those operations from Great Britain? Or from Lichtenstein, the Cayman Islands or one of the other foreign links in the labyrinth of his limited partnership organization? Would he have sold them to another American company -- or perhaps peddled them to the highest bidder abroad?

. . . Consider our chemical business: It exists not only as a factor in very competitive global chemical markets but also to provide synthetic rubber, fabrics and adhesives for our own tire and general products manufacturing operations; and by the way, is the world's largest producer of synthetic rubber. We got into the synthetic rubber business in World War II at the request of the government when America was cut off from most of its suppliers of natural rubber. Is this a business that should be given up easily to foreign control?

. . . And what about our venture into building a crude oil pipeline and investing in oil and gas reserves, principally in the west and offshore California?

With crude oil back up around $20 a barrel, those reserves hold good profits beyond their importance to national security. Ditto the All American Pipeline, now with its main segment completed and eventually to be ready to move surplus crude from the West Coast to Gulf Coast refineries more securely and much more economically than the present method of ocean shipping it around through the Panama Canal.

Well, as you may know, we did salvage our chemical business along with our tire business and our industrial rubber products operations. But to do that, we had to buy back nearly half of our stock, leveraging Goodyear to 80 percent of debt to total capitalization.

To help work the debt down to more normal levels, we have closed three plants, cut employment by 4,000 jobs, sold our five-star resort and other properties near Phoenix, Arizona, sold an automotive wheel and brake subsidiary, sold our aerospace subsidiary, and are in the process of selling off the pipeline and our gas and oil reserves.

Everything we've sold so far has been to American interests. However, until legislation slows down the "bum's rush" raiders still can give to American corporations, heaven knows who, and from what country, might now be looking greedily at the situation of the new owners.

As a matter of interest: Our aerospace subsidiary was sold to defense contractor Loral Corporation of New York. It thus escaped the clutches of the knight and his band, but since has lost a round to the British anyway.

In a project that started long before the attempted takeover, Loral -- nee Goodyear Aerospace Corporation -- was bidding against a joint venture made up of Airship Industries of England and Westinghouse on a Navy contract -- U.S. Navy, that is -- for construction of a prototype airship equipped with radar to detect missile attacks on surface ships.

The Loral Systems Group felt it had a leg up with the near completion of an advanced airship which soon will join Goodyear's fleet of advertising/PR blimps. The new blimp has such features as vectored turbine engines, a sophisticated electronic flight system, and employs composite, nonmetallic materials -- advancements that could well be applied in the Navy project. Development costs, including studies by university and private research organizations, ran into the millions of dollars. Not one cent of this was subsidized by our government.

Loral bid $140 million on the Navy blimp project and $18 million on the radar, a field in which it has considerable experience. Total, $158 million.

The British firm and Westinghouse bid $118 million on the blimp and $50 million on the radar. Total, $168 million, or $10 million higher than Loral.

Guess who ate Loral's lunch: Airship Industries of Great Britain and Westinghouse. The Navy said it picked the joint venture on the basis of its lower bid on the blimp per se, and then awarded Westinghouse the radar contract despite its higher bid on that.

Congressman Tom Sawyer expressed his opinion in these words:

"The loss of the award is a shocking blow to Loral and to Akron, but it is the nation's defense that is likely to lose the most . . . The award effectively results in the exportation of U.S. technology with the potential of creating a foreign source as the only future supplier for the Naval airship program."

The Akron Beacon Journal subsequently quoted a Westinghouse executive as confirming that the Navy's decision was based in part on international politics. The report said the Administration wanted to provide British Prime Minister Margaret Thatcher with a favorable announcement before tomorrow's elections in Great Britain.

Well, tally ho! But you can't blame the folks back in Akron, Ohio, for wondering whether their competitive handicap might be right here in Washington.

Similar questions could be raised about proposals to award Israel a contract for wheels on U.S. tanks, to go to Germany for tank tracks, or to France for tires for the Army's Hummer vehicle.

In the case of the Navy blimp contract, I can't help but speculate on whether the jobs involved would be in Akron had Goodyear not been the intended prey of the English knight; had we not been forced to sell our aerospace group in our ensuing restructuring. We'll never really know now, will we?

I do know that while we were defending ourselves against the raid, a number of Congressmen and Senators were asking us about the possibility of militarily sensitive aerospace projects and information falling into foreign hands;

. . . about the possible fate of our synthetic rubber facilities upon which we and other members of our industry depend;

. . . about our natural rubber plantations abroad, and the natural rubber stockpile.

We had no good answers. The various agencies around Washington had no answers for us. There didn't seem to be any system in place in Washington to look responsibly at the national security implications.

As you know, legislation is being considered that would require raiders to go public earlier on their holdings in a company, describe the nature of their financing and give managements and shareholders more time in which to make informed choices, versus the traditional "bum's rush."

Senator Exon's amendment, with its direct concern for the national security represents an important -- yes, critical -- element heretofore not adequately addressed. I trust Congress and the Administration will give it the attention it deserves.

Let me give you a parting thought that is fanciful but entirely possible under existing laws:

. . . If I were Khadafy, I'd put a dozen Libyans in three piece suits, send them to Wall Street, assign them to different American industries, bankroll them with junk bonds or petro-dollars, and watch them destroy America's industrial base without firing a shot.

Think about it.

The CHAIRMAN. Yes, sir, Mr. Parkinson.

Mr. PARKINSON. Mr. Chairman, also in the interest of time I would just like to request that my statement also be entered into the record.

The CHAIRMAN. It will be.

Mr. PARKINSON. Very briefly, Micron Technology was started in 1978. We were initially a consulting company doing design contracts for a number of companies including Mostek at the time, AVX and Digital Equipment Corporation.

In 1981 we went into manufacturing of semiconductors, and just to show you how fast this industry moves we are now the largest manufacturer of dynamic RAM memories in the United States.

One of the reasons that that is the case is because the Japanese have succeeded in driving out of business all of the other manufacturers, and by that I would list Mostek, who was the leading producer of the last decade; Texas Instruments, who moved all of its production to Japan; Motorola, which got out of dynamic RAMs totally; Intel and National Semi are also totally out.

Now these leaders have been replaced by NEC, Hitachi, Toshiba and Mitsubishi. As the screw is turned and now there is a demand for dynamic RAMs, we are seeing pricing moving back up, and we are seeing these companies trying to get back into the business. Texas Instruments has now started to try to produce again in Texas and has the ability to do that by virtue of at least maintaining some productive capability in Japan.

Motorola, to get back into business, is packaging a Toshiba DRAM. Now, this is the leading semiconductor of the electronics industry. It is about a $4 billion market going to $10 billion. It is the highest volume semiconductor produced. Motorola, to get back into the business, is packaging a Toshiba die, and I think that is a tragedy.

Intel is now thinking about having Samsung, a Korean company which is the DRAM business, make a DRAM and put Intel's name on it.

So the point I am trying to make is that this technology is a fast-moving train, and you have to be going full speed to just stay on it. If you once get off it, you do not easily get back on. It is very easy to shut down these plants. It is very easy to destroy the American DRAM or any other industrial capability. It is very hard to revive it.

From my perspective, having been in a targeted industry where the Japanese, according to yesterday's Wall Street Journal, were selling even recently at 55 percent of their cost and have now moved back to 85 percent, and I want to emphasize they are still dumping and still targeting this industry, that they have had great success in moving from a market share of 20 percent to 90 percent in five years.

When they go about attacking an industry, from our perspective they use every means available. This would include dumping. In my mind, the next step, now that they have so many U.S. dollars and that we are running at such massive trade deficits vis-a-vis Japan, is that the other easy way to attack an industry is to simply buy it.

While Secretary Baldrige may say that to date we have not had a serious problem, I think we have seen a warmup for a problem that will be occurring more frequently than we would like to think. I have already seen NMB take over a ball bearing company in New Hampshire. NMB has also moved into semiconductors, and if they could do it in the case of that industry I do not see why they cannot do it in the case of other industries.

Fujitsu was a highly-publicized instance of a takeover, but I would expect that we will see this on a more frequently occurring basis. I cannot see why it is not in our interest to get the mechanism in place if it became an epidemic so that we could respond to it immediately rather than having to go through, again, the hearings and the legislation to get prepared after the fact, after the cow is out of the barn.

That has been my perspective. We were the first to file a dumping action, and I want to emphasize that we won so overwhelming the administration self-initiated the next DRAM dumping case for the 256 in later generations, and that led to the United States/Japan semiconductor agreement.

From our perspective, all of this was too little too late. These problems arise so quickly. When these attacks come they are so vigorous. They get the capacity in place. You do not intentionally sell below cost. You have to plan to do that. You have to put plans in place that can produce in excess quantity, and that is what drives the American industry out of a business.

So all I can tell you is that when the attack comes, if it comes in the form of buying U.S. businesses as opposed to dumping them out of business, I think we had better have the weapons and the artillery in place to respond to it and get that done in advance as opposed to waiting for the problem to become too serious to handle at a later date.

So that is basically our perspective. There is no question in my mind that, for example, the Fairchild or any other semiconductor business, if taken over by a foreign company, that we would be facing serious losses.

Even today, our largest competitor, our competitor for defense business, the fiercest competitor we have is Fujitsu. It may surprise you that the U.S. Defense Department is buying so much semiconductor hardware from Japan and other foreign countries.

That is the way the business is today because we depend so heavily on them. When they make 90 percent of them, we have no choice but to buy foreign products. I think it is a much more serious problem than we already perceive, and it is going to get worse.

[The statement follows:]

STATEMENT OF JOE PARKINSON, CHAIRMAN AND CEO, MICRON TECHNOLOGY, INC.

Good morning. Thank you, Mr. Chairman. My name is Joe Parkinson. I am chairman and chief executive officer of Micron Technology, Inc. I would like to thank you, Mr. Chairman, and the Committee very much for giving me the opportunity to appear before the Committee today.

Micron Technology, Inc. is a semiconductor manufacturer located in Boise, Idaho. Originally founded as a consulting company in 1978, the company subsequently changed its emphasis and began manufacture of semiconductors in 1981. At our facility in Boise the company designs, manufacturers and market dynamic random access memory components, known as DRAMs, one of the most widely used semi-

conductor components in computer systems. The plan in Boise includes design, wafer fabrication, test, and assembly facilities, making our company the only American owned company manufacturing DRAMs which has its entire production process onshore. We currently employ approximately 1,400 people, manufacturing both 64K and 256K DRAMs. We are also producing prototypes of our 1 Megabit DRAM, the latest generation of memory product. Micron is a merchant manufacturer which means we sell our product largely in the open market rather than produce it for our own use.

Micron has been in the front line on the trade issues which now confront the United States. In June 1985, because of persistent sales of 64K DRAMs by the Japanese below cost, Micron Technology filed its semiconductor antidumping case with the International Trade Commission and the Department of Commerce. Although there were many skeptics at the time, the case has now run its course, we have prevailed at every stage of the proceedings, and an antidumping order is now in effect. After we commenced our petition, the President's Task Force on Trade became involved, and as a result, the Commerce Department self-initiated an antidumping petition concerning 256K and above DRAMs from Japan. That case, together with a companion case concerning EPROMs, is currently under a suspension agreement as a result of the U.S.-Japan Semiconductor Trade Agreement.

As you are no doubt aware, the semiconductor industry in the United States has been undergoing a crisis in competitiveness over the last several years. Only a few years ago the leaders in the DRAM indutry were companies like Mostek Corporation, Texas Instruments, Motorola, Intel, and National Semiconductor. Now the leaders are companies like NEC, Hitachi, Toshiba and Mitsubishi. During 1985, Mostek Corporation was closed down and sold. At about the same time, Motorola, Intel Corporation and National Semiconductor withdrew from the DRAM market. Texas Instruments and Micron are the only U.S. based manufacturers of DRAMs left.

The problems experienced by American DRAM manufacturers are not accidental. In the mid-1970s the Japanese government decided that computers and information services were the kind of high value-added industries that Japan wanted to dominate and that entry into the industry would be though volume production of semiconductors and other components. Joint research and development projects were set up among the major manufacturers. Low or no interest loans and export assistance were provided. In the late 1970s Japanese manufacturers held about 40 percent of the worldwide DRAM market. By the early 1980s, in the changeover from 16K to 64K DRAMs, these same manufacturers increased their market share to as much as 70 percent of the market. Through continued price cutting, excess construction of capacity, overproduction, and sales below cost, Japanese manufacturers now control 85 to 90 percent of the world DRAM market. The Korean government and Korea's largest companies are now trying to emulate the Japanese and have embarked on a similar program.

The changes in the U.S. semiconductor industry and the sheer size and economic power of our foreign competitors are real cause for concern in the protection of our country's technology base. Make no mistake in this regard. There are some who would say that we do not need to be concerned about the Japanese and our other foreign competitors because we are still ahead of them in technology, particularly software, and they are not as inventive as we are. This is a very foolish and shortsighted position. Our foreign competitors are extremely aggressive and competitive. They are also intelligent and capable of inventing or creating the technology necessary to drive any industry. It is only a matter of time and experience.

Protecting our technology base involves more than enforcement of patents and design technology. Much of what drives the semiconductor industry in the United States is pure "know how" or trade secrets not entitled to the normal legislative protections. Since one of the ways to obtain this kind of expertise is simply to buy the company, we do need to have some review program which would give our government the legal ability to stop takeovers of U.S. companies by foreign interests when our national interest and security are at risk.

The semiconductor industry is dependent on what is known as the "experience curve," which means that the more you make the better you get. The technology is like a fast moving train. You have to be going full speed just to keep up. You cannot get off the train and expect to get back on with ease. The train has moved down the track without you.

The consequences of not keeping up are severe. Two of the most important for the United States with regard to semiconductors are defense dependency on foreign product and the loss of state-of-the-art product. With regard to defense, it is absolutely unacceptable that we have allowed our country to become dependent on for-

eign supplies of semiconductors for our weapons and defense systems. We are, in fact, encouraging foreign production of products like DRAMs by allowing foreign manufacturers to supply product to defense subcontractors and by allowing U.S. based manufacturers to produce, even partially, products in other countries. No matter how strong our alliances or how loyal our manufacturers, production overseas allows for disruption of supply during any hostilities. It doesn't matter whether it is a Japanese company who is the only supplier or an American company assembling product in Singapore; both spell trouble for American defense if shipping lanes are cut off.

With regard to losing state-of-the-art products, whether they be for defense or commercial interests, it must be kept in mind that unless you are making the latest kind of semiconductors in volume, you are not learning the things necessary to move on to the next generation, you are not developing the latest equipment and you are not refining the latest manufacturing process. Inventing the product is not enough. You have to be able to produce it in volume on the most advance equipment using the latest processes. Anything less, and you slip behind. The threat that the Japanese and Koreans may develop the most advanced equipment before the U.S. is very real because they now have more companies engaged in the high volume manufacture of DRAMs than the United States.

The problems our country faces in high technology manufacture is not some remote possibility. It is here now. Our competitors know that we have the finest technology available in the world. But they also know that we are in danger of losing it through the loss of our manufacturing base whether by companies going out of business or by being the target of a takeover or a consolidation. We must protect this technology at all cost. Failure to do so can only lead to second class status.

The CHAIRMAN. There is no question that the problem is real. I have a fear perhaps that we need, rather than the volition or discretion granted by the Exon Amendment, perhaps a little bit more precision in policy. I think maybe that is one of the real problems.

The Commerce Department is just like Rip Van Winkle over there. They come forward and say there is no problem. I am thinking of the problem this Committee faces with respect to the further deregulation of the regional telephone companies with respect to AT&T. One of the big holdups is if you allow the regional companies to go into the manufacture of these central office switches, the only two manufacturers left in the United States are AT&T and Northern Telecom, and they could go into Singapore or Japan and put those two out of business.

So this international trade and competition is a very splendid thing, and it needs careful study and analysis because, as you well indicate, you are out of business by the time you turn around. If you get off the train, as you describe it, you never get back on.

I have talked to the Motorola people. I have been working with them over the years. They have had 2,000 Japanese-speaking employees in Japan and are barely getting in their market. That thing about you have to learn the language, we have to send them all off to school, we do not know the language; money talks.

Mr. PARKINSON. Mr. Chairman, I could not agree more. We tried to open an office in Japan, and out in Idaho we have some Mormon missionaries who were in Japan, spoke the language for 2 years, and they were also excellent engineers. They were no sooner there than their passports were revoked, and they had to take their whole families to Hawaii, which is the closest they could be, for about 10 days.

We faced disruption after disruption after disruption. We tried to sell DRAMs at a nickel apiece when the market was about $2 and were unable to do it. That was our experience.

The CHAIRMAN. There you go. You are trying your best to compete, and the politicians in Washington say you are not competitive. It is the government which is not competing and not producing. There is no question about it.

I take it, Mr. Mercer, if you had this Exon amendment into law in the next 10 minutes, you can see with the Secretary of Commerce nothing would happen.

Mr. MERCER. That is, of course, one of the concerns. He makes the statement that investment is trade and trade is investment, but that is not what we are talking about in hostile takeovers. We are talking about piracy where there is stock speculation for quick profit which results in the decimation of industry. That is not trade, and that is not investment.

The CHAIRMAN. I take it they have bought several billion worth of shares off the American market since January, and they are in here buying and they know how to target. We have a problem, and the administration's response is to list all the committees that they have. They come forward and testify that they have a lot of committees and there is no problem.

Senator Danforth.

Senator DANFORTH. Mr. Mercer, your problem, as I understand it, was an attempted hostile takeover.

Mr. MERCER. Yes, sir.

Senator DANFORTH. Did it matter particularly whether it came from Sir James Goldsmith or whether it came from somebody like Carl Ichan?

Mr. MERCER. My problem would have been the same no matter which raider had done this. The fact that it did come from a foreigner raised the question about our national security, and the question was never answered.

I submit that these raiding tactics, whether they are foreign or domestic, erode the industrial base of this country to the point where we will not have the ability to defend ourselves. I think that is important.

Senator DANFORTH. I think that that might be a good point; that we or whatever the appropriate committee in Congress here in the Senate should look at the whole issue of hostile takeovers.

This particular amendment does not deal with hostile takeovers across the board. This particular amendment deals with only foreign transactions. It deals with not only hostile takeovers but friendly mergers. It also deals with joint ventures and with licensing agreements.

My problem is not with the outrageous things that we would like to stop if we could in the targeted way but rather the fact that what this does is put any department or agency head in the Federal Government, no matter how remote, anybody who somebody could find, in the business of triggering an investigation into mergers, acquisitions, joint ventures, licensing or takeovers.

Does Goodyear have any joint ventures or licensing agreements?

Mr. MERCER. Yes, we do, and we are located in 27 countries from a production point of view outside of the United States. So we are very familiar with the whole global process and have not really had a problem in investing in those countries in which we are in-

terested, in spite of the fact that they do have much tougher regulations and laws than the Exon Amendment suggests.

I think a lot of this, Senator, has to do with what the purpose of the investment is all about. If the purpose is to play games in the stock market and bust up a company, I think that is a serious problem and should be hit from any area. If the Exon Amendment helps to prevent that kind of activity, I just simply have to support it.

Senator DANFORTH. I understand your own problem, and I think if I were in your shoes——

Mr. MERCER. Senator, it is the country's problem. We have handled ours, but I am concerned about the country.

Senator DANFORTH. I appreciate your views, but it seems to me that what we should attempt to do is to be as carefully targeted as we can be and not to utilize very broad authority where a more narrow remedy, perhaps, would be just as sufficient.

Mr. MERCER. CFIUS never came into play when our aerospace operation was in jeopardy, and they are a very serious and important defense contractor.

Senator DANFORTH. Do you take the position that with respect to Goodyear the problem was one of national security? In the Goodyear acquisition, had the Exon Amendment been in place would Goodyear have fallen within the definition of national security?

Mr. MERCER. I think so, but again it is the discretion of the President.

Senator DANFORTH. I must say that in reading this bill I do not see the discretion. I do not see the discretion. As a matter of fact, once there is a finding of national security or an essential commerce has been made, then it says the President shall take such action for such time as the President considers appropriate, and so on.

Well, that is all the questions I have, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much.

Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman. I will be brief.

Mr. Mercer, you should not be for this legislation. The Secretary of Commerce said that it would have a chilling effect. Goodyear is a big company. You need investments, and you are in 21 countries around the world.

Do you think this would have a chilling effect on your company? That is what the Secretary said.

Mr. MERCER. I could have used a little chill last fall.

Senator BREAUX. Well, that is the answer. You are an international businessman, a Fortune 500 company, a very successful company that we are proud of in this country. Who better can tell us whether this legislation would have a chilling effect on investments in U.S. companies than the chairman of the board of a major U.S. company that depends on investments.

The other countries that I listed earlier or referred to that have these requirements that investments in their countries be looked at, you are in 21 other countries——

Mr. MERCER. Twenty-seven.

Senator BREAUX. Twenty-seven, and you have done investments. Have you been able to obviously meet their requirements with regard to these type of investments in foreign countries without a problem?

Mr. MERCER. Absolutely. Again, you get back to motive and what the intent is. Those countries look at whether there is a positive effect from our investment, including Canada. We continue to make investments in Canada.

Senator BREAUX. When you had your problem, did you seek help from anybody in the government?

Mr. MERCER. Yes.

Senator BREAUX. What kind of response did we get?

Mr. MERCER. I was given the story about the free enterprise system.

Senator BREAUX. Mr. Chairman, I think this witness makes a very good case for the Exon Amendment.

I am looking at some notes here on the legislation that the Secretary said was what was needed and is already on the books, the International Emergency Economic Powers Act. It is interesting if you look at the history of that and how it has been used. It has been used during national emergencies. It was used by President Johnson from 1968 to 1974 during the Vietnam conflict. It was used, incidentally, to prevent U.S. investments overseas, not to prevent takeovers of companies by foreign interests over here.

I think that he should have at least that same type of power during a normal period and not only in the national emergency such as a war or a conflict of that nature. I think both of these witnesses have made a very good point as to why the amendment is needed.

Thank you.

The CHAIRMAN. Senator Kassebaum.

Senator KASSEBAUM. Yes. I would like to second that. I think both witnesses have given very important testimony.

I would also guess that both of you would believe, and I think we all share, and a consensus is forming, that we should draw a tight amendment and be as careful in our drawing as possible because it is, I think, a major issue and one that must be handled responsibly.

Unfortunately, I do not think when you have a national security guideline you can really distinguish between hostile or friendly takeovers. If there is a national security concern it should apply, in review, to both takeover attempts.

Mr. Mercer, when Goodyear faced a takeover Hart-Scott-Rodino did not apply at that time because partnerships were not treated as corporations.

Mr. MERCER. That is correct.

Senator KASSEBAUM. With the recent interpretation ruling of the FTC and the Department of Justice, partnerships are to be treated the same as corporations. So in that particular instance, if it had been in effect the takeover would have had an antitrust review; is that correct?

Mr. MERCER. It would have been very helpful.

Senator KASSEBAUM. That would have at least given some time to step back and have someone reviewing it.

I go back to my earlier question to the Secretary. If there was a national security review at the same time as an antitrust, do you believe that this would have had an adverse effect or would have adverse effects on foreign investment that has some real purpose and meaning?

Mr. MERCER. It would have slowed down the process of the raid in this particular instance because there was a foreigner involved.

Yes, I do think it would have that effect, but perhaps what would come out of it was that it was suggested we spin off aerospace and keep it here under domestic control. I do not know. Anything that stretches out the process in the event of a hostile takeover which is clearly for the purpose of busting up a company for a quick buck and running has to be slowed down or we decimate our industrial base. That is really my point.

Senator KASSEBAUM. Do either of you have a suggestion of how the legislation could be more tightly drawn, or does it bother you in any way that there may be joint venture licensing terminology that could cause some problems? Have you looked at it closely enough?

Mr. PARKINSON. You have to understand that I come from a very extreme position. I think I have been on the front lines in the targeted industry. Sixty-five thousand jobs have been lost in the semiconductor industry in the last 5 years.

So, as far as I am concerned, if you are drawing the legislation I would prohibit all foreign investment. I would go that far.

Senator KASSEBAUM. Mr. Mercer.

Mr. MERCER. I would not go quite that far. I think foreign investment is needed. I do agree that investment is trade and trade is investment provided it is proper and appropriate investment.

The type of thing, again, that results in a hostile takeover is not appropriate, and it is not good for the wellbeing and security of this country.

Senator KASSEBAUM. As Senator Danforth asked you, if it was a friendly takeover and there is still a national security implication or could be, how would you regard that?

Mr. MERCER. I think we have the obligation to come to Washington and say we want to sell out to this organization, and here is what is at stake, and let Washington take a look at whether or not there is a security problem involved.

Frankly, the way we operate, if we thought there was a security problem involved for this country we would not enter into those negotiations.

Senator KASSEBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Exon.

Senator EXON. Thank you, Mr. Chairman.

Mr. Mercer and Mr. Parkinson, we appreciate very much your coming here and giving us a perspective from America's business standpoint.

To you, Mr. Mercer, I would say that this administration was motionless and frozen in its inaction on the Goodyear raid, all in the misguided interpretation, I feel, of the free enterprise system.

As inventors of the free enterprise system, I would simply suggest that if we follow the thoughts of the Secretary of Commerce and our Trade Representative, both Nebraskans I might add——

Mr. MERCER. He is also a Yale man, which I am.

Senator EXON. Well, we can forgive him for that.

All I suggest regarding the misguided policies is that our enterprise system will handle everything if we just allow it to run rampant. I suggest that with the experience that we have had in the last few years with our markets and our major corporations becoming pawns in the international diplomacy, in the international moneychangers, we are very likely to see what could be a third world clash for the United States of America in the future, because I think that our industrial base is right out there on the line.

I do not mean to say that the Exon Amendment is going to cure that. It is a minor step in the right direction to give, at the discretion of the Secretary and the President of the United States, authority to take action in a way in which they do not have now.

I would also say that piracy is not synonymous with free trade or the free enterprise system, elsewise the decendants of the pirates of the Caribbean would be the enterpreneurs of the free world today, which they are not.

I want to ask you a question, Mr. Mercer. I know firsthand what this raid has done to Goodyear, despite the plastering over with free enteprise-sounding words by representatives of the administration, including the Secretary of Commerce and including the Trade Representative, both Nebraskans.

What was the total cost of the Goldwater raid on Goodyear? Do you have any personal fear that in addition to getting rich one of Sir James Goldsmith's motivations was to acquire——

Senator MCCAIN. Mr. Chairman, I do not think Senator Goldwater was involved in that.

Senator EXON. Goldsmith. Did I say Goldwater? I am sorry. I did not want to bring my good friend, Barry Goldwater, in on this.

Was Sir James Goldsmith's motivation to acquire the advanced technology of Goodyear? Was there any way that you could have foreseen a raid on Goodyear? Do you feel that the existing system rewards investments in research and development that we have long held as the foremost part of our free enterprise industrial system in America?

Mr. MERCER. As I understood his motive, it was to buy the company and bust it up on the theory that the company in the marketplace is worth more in pieces than it is in the whole.

The way to prevent that from happening is to keep buying back your own stock. Do not make investment in R&D, and reduce investments in the plants or even other acquisitions that may be helpful to your total future.

So what we are saying is if we take the whole Wall Street approach right now, industrial America should not be investing in the future but rather should be covering its hindquarters by bringing back its own stock and trying to optimize the stock price.

What I think is going on in Wall Street right now is the economic equivalent of AIDS.

Senator EXON. Would you say that a little louder so everyone can hear it?

Mr. MERCER. They heard it, did they not, Senator?

Senator EXON. I heard it, and I thank you.

Can you put an approximate cost to the Goodyear operations of the raid as of now?

Mr. MERCER. We had to borrow $4 billion, and we are spending over $1 million a day in interest to 17 banks around the world. I submit that that money could go into investment in this country to make us internationally competitive in those product lines in which we choose to operate.

Senator EXON. But, Mr. Mercer, that is good for the banks, is it not?

Mr. MERCER. It may be good for the banks but it does not help our gross national product or our ability to build an industrial base that we will need in the time of an emergency.

Senator EXON. I agree, and I appreciate your making the point.

I have one question of you, Mr. Parkinson. It is a follow-on to the information that you offered as a response to other questions.

I take it that as a major semiconductor producer you clearly feel that you compete on a totally uneven playing field with foreign producers today, and I thought the testimony that you cited with regard to having passports taken back in Japan indicates that we are not playing on a level playing field.

What type of protection does the semiconductor corporation receive from other nations today, including the Japanese or some others?

Mr. PARKINSON. I appreciate the question. It gives me a chance to talk about the real heart of the issue, which certainly is competitiveness.

First of all, the reason that Micron has survived and others have not is that we make a 64K DRAM which is half the size of any Japanese producer, which gives us double the production from the same wafer. Our 256 DRAM is also the smallest of this generation, which is the current major producing generation.

So when we saw the Japanese selling below our cost, we said it is impossible for them to be producing at less than what they are selling them for, and we thought we had an airtight dumping case, which turned out to be the case.

Then you look back over the history. Pricing is a symptom. It is just a ramification of an industrial policy that Japan has. Their industrial policy is to build up excess capacity, and they do this through a combination of, first of all, MITI-sponsored R&D. It is a joint R&D effort.

What each one of us would spend in developing equipment, in developing chemicals, examination for contaminants—we have to manufacture in an extremely clean environment—what each one of us does individually those companies do jointly, including most recently we have just seen the announcement that they have a joint effort developing microprocessors, which will be their next targeted semiconductor area.

They did that in DRAMs. They just shared all of the technology. We are now trying to respond with Semitech, a joint government/industry project where we will try to get together, and each one of us will not be reinventing the wheel for chemicals, equipment and manufacturing processes.

The Japanese have been doing that for over a decade, and that is why they are successful.

Secondly, they do have low cost assured loans. Now, this is a frequently overlooked important item, because whereas Micron has the money to put our facilities in place in the first instance and to compete initially, what happens when you get into one of these price wars or dumping wars, then no one wants to touch you. You do not have the operating funds to keep going. You certainly do not have the capital at that point to keep reinvesting, but you do not even have the operating funds to withstand the losses that you sustain which we had for a 2-year period.

We made $30 million on $87 million in sales in 1984. We broke even in 1985, and we lost $33 million in 1986. We had local banks that helped us withstand that onslaught, and we had very lost cost positions so that we were not feeling the pain like some of the other companies were.

The difference is the Japanese know they have the money to get over that period. That is the difference. We have become a pariah on Wall Street. We are virtually barred from the Street. To raise money, we had to go to Europe in January, and it was a private placement on a very expensive basis.

With the Japanese, first of all, it is a huge combination you are dealing with, a $50 billion company. A $7 billion company looks big in the United States. You are talking about an enormous conglomerate. You are also talking about government support. So they know they can withstand the price war for a prolonged period and by prevailing then raise prices once they own the market. That is the scenario that we have observed.

The United States has to come up with some mechanism to respond to that. It is against our whole ethic, our individual pioneer spirit, our free enterprise system, but that is the world economy that we are dealing in today. Korea is now doing the same thing on an accelerated basis. I do not know what our response is going to be, but it is going to have to be something because it is an all-out war out there.

Senator EXON. My last question has to do with agriculture. We know what is going on in the international world today and we are losing. I do not know whether either of you have studied this or not, but is it not highly likely that some the difficulties that we are having by losing our previous foreign markets in agriculture today are suffering from the same unfair practices that you are seeing in the industrial sector?

Mr. PARKINSON. There is no question. J.R. Simplot, who is one of our major investors who ships a billion pounds a year to McDonald's alone in french fries, points out that you cannot sell beef in Japan at any reasonable price. You cannot sell rice. You certainly cannot sell potatoes on any reasonable basis.

So the notion of free trade, it is free trade when it is in their interest. I remember in March 1985 I opposed lifting the tariffs. We each had at that point the last remnant of a tariff, 4.2 percent. It has been as high as 12, 48 percent. It is still over 20 percent in Korea.

Once Japan had the R&D, once they had the productive capacity, then they came to us and said let us have free trade, let everybody drop the tariffs, because they were ready. We played right into it. We all dropped our tariffs, and they buried us.

So it is selective free trade. We have no free trade in agriculture by any stretch of the imagination in Japan, but we have free trade in semiconductors because they are ready.

Senator EXON. Would you agree, Mr. Mercer, that the agricultural interests are being adversely affected in America quite similar to the industrial interests?

Mr. MERCER. I think so. The only other thing I would add to what has been said here is that I think we often get trade and our foreign policy mixed up, and we try to use trade to affect foreign policy. We did that in agriculture, and it failed. We just simply gave the business to our competitors. Now the problem is how to get back in.

Senator EXON. Thank you very much, gentlemen.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. We just also sold the Soviet Union a significant amount of wheat that was subsidized by the U.S. taxpayers, as you might have noticed also, Mr. Mercer, which is not exactly in keeping with the free trade aspects which we seem to espouse.

Mr. Parkinson, in your statement you say:

> We are, in fact, encouraging foreign production of products like DRAMs by allowing foreign manufacturers to supply products to defense subcontractors and by allowing U.S.-based manufacturers to produce even partially products in other countries.

Would you, therefore, suggest we bar those activities?

Mr. PARKINSON. Thank you very much also for asking that question.

Yes, there is nothing that irritates me more than the notion that we are buying a U.S. product and kidding ourselves into thinking that it is U.S. product when what we are talking about is a Japanese-made chip.

Now, the chip is the high tech element of the semiconductor, and it is inside the package. That chip is made in Japan, and then it is brought over here and packaged by Motorola or some other defense contractor and treated as U.S. made. That is just ridiculous. We are totally at their mercy. This is a foreign-made product, packaged in the United States, and it should not be allowed to be purchased by the Defense Department as far as I am concerned.

Senator MCCAIN. I would be very interested in what IBM would have to say if we carried out your recommendation, because I think they would have a very different view. IBM, by the way, is a corporation which has been able to compete and compete successfully in Japan as well as other countries.

I also, then, think it raises the question if we in the United States should bar defense subcontractors and others who are based anywhere else from providing us with any part of the hardware that we use in defense procurement, then would those other countries find it perfectly appropriate to not purchase U.S-made defense equipment?

Mr. PARKINSON. Let me address IBM first of all. To me, IBM is the example of a company that is self-sufficient. They are the only ones to my knowledge who are totally self-sufficient for DRAMs.

Senator MCCAIN. I was not talking specifically about DRAMs.

Mr. PARKINSON. I am just saying that I think IBM operates the way we should be operating, which is that any critical component they make internally. I think the United States should be doing the same thing.

As far as foreign countries and their own defense requirements, I cannot imagine it is also not in their interest to make as much of their defense needs internally as possible.

Senator MCCAIN. So you would agree that they should purchase from their own defense manufacturers their defense equipment then? That would only be fair?

Mr. PARKINSON. The fact is, in my experience they do. I have never been able to sell anything in Japan. I have no trouble selling in Hong Kong or Singapore, but I do not see the Japanese—If they can get it domestically, they buy it. They buy nothing foreign.

Senator MCCAIN. The fact is that the majority of defense equipment used by NATO and the Japanese are U.S. manufactured. That is a fact; perhaps not with regard to DRAMs, but the United States has certainly exported and sold a significant—there is a significant difference in the amount of defense equipment the United States sells in Japan and to the European allies as opposed to how much we have purchased from them. In fact, it is in the area of four or five to one.

So if we continued your philosophy and expanded it from DRAMs, I tell you, it would have a significant impact on international trade and our trade imbalance because we have discouraged the Japanese from being involved in their own defense manufacturing, such as fighter aircraft and others. In fact, we are concerned that we are going to.

So I think your view is a bit simplistic on that.

Mr. PARKINSON. It saves them from having to invest in defense and spend all their money on manufacturing so they can blow our industries away. That is what has happened. That has been the effect of that policy.

They concentrate on high volume. We concentrate on low volume, and as a result they are destroying our industries when they compete head to head. They do not have the defense cost. We bear that for them, and I do not think that is fair.

Senator MCCAIN. So we should encourage them to get into the defense manufacturing business, then?

Mr. PARKINSON. I am not sure what the solution is, but we have given them a free ride at heavy cost. That is my viewpoint on it.

Senator MCCAIN. Well, I do not think there is disagreement here, Mr. Parkinson, that we have given them a free ride on defense, but that has been U.S. policy since the end of World War II. Perhaps that policy should be changed.

To make the case, however, that the United States is encouraging foreign production by allowing foreign manufacturers to supply products to defense contractors I think is a bit narrowly focused.

Mr. PARKINSON. I am very narrow and very extreme, and I make no quarrel about it. My viewpoint is that we have been in all-out war economically with Japan for a number of years, just like Teddy White said in the *New York Times*, and we are not facing up to it.

From my viewpoint from the front lines, it has been heavy duty. I do not think we are beginning to take the steps that we need to compete on the world market.

Senator McCAIN. Is it true, Mr. Parkinson, that a lot of the manufacturing capability of the Japanese has been acquired through licensing of U.S. technology?

Mr. PARKINSON. Well, as I point out in my remarks, a lot of people kid themselves that the Japanese are not creative or that they copied or that they have licensed and that has what has gotten them to where they are. I think that is very simplistic. In the same token, I would say that is very simplistic.

These people are very creative. They are very aggressive. The difference between them and us is we are focused on defense, and they are focused on competing economically on the world scene. We have to get ourselves refocused to where we can compete on the world scene or we are going to continue to get beaten up as we have in the past.

Senator McCAIN. That is an interesting statement, but it does not answer my question, Mr. Parkinson.

I asked was it true that a lot of the areas of the market that the Japanese have been able to dominate is through the method of licensing of U.S. technology which they have then been able to manufacture that technology in either fair or unfair practices and take over the markets?

Mr. PARKINSON. Not in my experience.

Senator McCAIN. Not in your experience.

Mr. PARKINSON. I might also point out that most of the patents being issued by the U.S. Patent Office go to Japanese, not to American companies, today.

Senator McCAIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Riegle.

Senator RIEGLE. Thank you, Mr. Chairman. I think this has been a very constructive session, and I want to thank the witnesses for what they have had to say.

Just as an immediate follow-on to the last discussion here, our trade deficit last year with Japan was $60 billion. That was the bilateral deficit. It is running at that same rate so far this year through the number of months that we have data in 1987, and that is despite an enormous drop in the value of the dollar versus the yen. We are finding that we are still waiting for the results of the J curve to turn those numbers around.

To put that bilateral deficit into perspective, we have a $170 billion aggregate deficit with the rest of the world last year. We are still running at that rate so far this year, but we have become the number one debtor nation, and that, I think, is not understood.

We talk about the trade deficit, but we do not look at the balance sheet. We look at the income statement but not the balance sheet. The balance sheet problem, it seems to me, goes directly to what you are talking about.

If you look at where we have gotten ourselves as the number one debtor nation, here is the President today in Venice, and we are in hock to everyone of the allies, financially.

Those are our creditors. So we go into a situation, presuming to deal from a posture of strength. And we're in such a weak financial position, even vis-a-vis our allies, starting with Japan but going right across the board there, that we don't have much leverage.

As a matter of fact, if anybody has got leverage, they have got the leverage, because we have got a hemorrhage of capital going on, and jobs with it.

We are going deeper into debt, Mr. Chairman, international debt, at the rate of $1 billion every 2½ days. That is the figure today. We have passed everybody else on the debtor nation list.

The New York Federal Reserve Board has estimated that by 1990, which is not very far away, we are going to owe the rest of the world a trillion dollars.

Now, when we owe the rest of the world a trillion dollars, and we have got to roll that debt over constantly, how we are going to hope to find the kind of capital we need to keep our companies modern or other companies modern or do the other things in this country that have to be done, whether it is defense spending, or road building, or education, or whatever it is, I do not see how we are going to do it.

We are certainly not going to do it without a much higher level of interest rates. And we have already seen some of that. We went through a Treasury refinancing within the last 2 months, and all of a sudden, the Japanese stepped back a little bit ahead of that offering, and interest rates went back up again. And they are up higher than they were at the present time.

So we are on a tightrope here, it seems to me, where we are putting ourselves in greater and greater difficulty. And that is the backdrop against which this discussion occurs.

Now, if I remember correctly, and refresh me Mr. Parkinson, did you not testify before the Senate Banking Committee with a panel of people representing semiconductor industry a year and a half or 2 years ago.

Mr. PARKINSON. It looked like me, but it was my twin brother, who also started the company with me. I am not joking.

Senator RIEGLE. Well, he was a good witness, and so are you. I am delighted to hear that, because that tells me that we could have one of you deployed at different committees on the same day.

Mr. PARKINSON. We are ready to do it. Because we do not want to work for the Japanese.

Senator RIEGLE. And it is important that we not. But I remember the most essential statement that came out of that panel of companies, including Intel and other major semiconductor companies, and what we think about Silicon Valley and its high technology advanced defense industry was that we had been kept out of the Japanese market systematically longer than a decade in such a way that we had been denied the level of sales that we otherwise would have earned on a sheer competitive and cost basis.

As a result, our industry had become dwarfed, permanently dwarfed, because we had not had the level of capital recovery coming off the level of sales that we would have had if we had really had a fair trading system and had been able to sell when we had competitive advantage.

And by the Japanese keeping us out of a very important market until such time as they could take and grow their domestic companies to size, we found ourselves at a point where more and more our domestic computer industry and semiconductor industry was driven into sort of a boutique mentality where we had to fill niches in the market rather than being able to go out and play on the broad range.

I was profoundly struck by that testimony. Because we've seen the problems in the industrial base. But to have that kind of testimony coming from people on sort of the cutting edge of technology and in the semiconductor area, which relates so importantly not just to the domestic side of the economy, but to defense capability as well, I thought was very striking.

Now what you have testified to today reinforces that view that we are, in a sense, further behind the eight ball, because of the continuation of these trend lines.

Now, having said all that, I have to say that I think Senator Danforth is right in asking for this hearing. I support the concern as to how we interdict this problem, which is an enormous problem, in the right way.

I think we have to do it carefully, because we are on a tightrope here. And like it or not, we are hooked on foreign capital.

It used to be our money, but we gave it away for the video recorders and the foreign cars and this, that and the other. And all of a sudden, we are now borrowing back what used to be our money.

But increasingly, we have to have it. And if we do not have it, we are going to be in real trouble. So there has to be the ability for money to move around the world.

We have just developed a tender offer reform bill in the Senate Banking Committee which was cosponsored last week by ten Senators. And it is a significant bill to tighten up the hostile takeover process.

I do not know, Mr. Mercer, to look at it or not, or if anybody has given you a summary of the details, but I think that will go a long way, that legislation, will go a long way toward dealing with some of the problems here, whether it happens to come from abroad or within the country.

Do you have any kind of an early sense on that or not?

Mr. MERCER. From what I understand, Senator, it is a movement in the right direction in that it increases the investment period, it reduces the threshold amount and says that you have to, I think within 24 or 48 hours, report when you cross over that threshold.

And these are important ingredients to make the raider an investor rather than simply a share passer.

Senator RIEGLE. Well, let me urge both of you to look at it. I would say as well to the question of foreign capital versus domestic capital, Senator Danforth, that bill in the banking committee does not make that differentiation as we talked about today.

That does not address the issue of where the takeover is coming from, whether international or here. But it does, in many ways, provide some of the safeguards and some greater equity in that process.

And it diminishes the chance for market manipulation and stripping of assets and raiding of pension funds and so forth, which is a pattern that we have seen.

So that addresses part of this problem. But it does not address the deeper problem of this imbalance that we have got in our international competitive position which is now reflecting itself on our international balance sheet and is weakening this country day by day.

There is no way that we can continue to have an outpouring of capital at the rate of a billion dollars every 2-1/2 days and not eventually find that every last industry in this country is going to be in this room asking for help, whether it is the defense industry, or whether it is the aircraft industry, which has always been an advantaged area of ours, and I know there is an aircraft aspect that relates to the situation of the State of the Senator from Kansas and so forth.

But we are going to have to do something here. And I would make one suggestion. I think if we stick with wording similar to national security or essential commerce, that we in fact create a level of ambiguity that probably does not serve us well.

I certainly support the notion of national security. I think that is clear. But I think somehow we have to tie the two things together. Whether we call it essential commerce related to national security, or something like that, I think we cannot have two freestanding definitions, where the essential commerce one, I think, is so amorphous that it leads us away from where we want to get to.

Now, having said all that, I think we have to go down this track. So I am very sympathetic and supportive of what the Senator from Nebraska is doing here. But maybe what we can do is tighten this up in a fashion that gets at the problem, because we are in trouble.

I did not hear Secretary Baldridge, because I was at another meeting. But I have heard that song and dance, and we may hear more of it this morning.

But the trendlines are devastating. That is what you are telling us today. And our future is at stake. I will just give you one other statistic related to this. Because we talk about things we have to spend money on, national defense and other things, and now about to apparently flag the Kuwaiti tankers and take on that cost by ourselves.

Mr. Chairman, in terms of this competition with Japan, their high school dropout rate today in Japan is 2 percent. They are getting 98 percent of their kids through high school, most of them going on for advanced training of one kind or another.

The high school dropout rate in America today is 24 percent across the country. So we are ten times worse in that category than they are.

In the City of Detroit today the high school dropout rate is 59 percent. In the City of Boston, a place where we have probably got as great a collection of universities and talent as there may be in the country in an academic sense, high school dropout rate is 54 percent in the City of Boston and if you go across the country, you will see rates similar to that.

So when we talk about the need to start to perform better nationally, and having the money to do it, whether it is to modernize

Goodyear and be state of the art, or to modernize the semiconductor industry, or even to get our children through school so that they have got the skills that they need to go out and go head to head with the engineers in Japan or the engineers in Taiwan or so forth, we have got to get ourselves reoriented.

We do not have much time. We have had a lot of sophistry, I think, in terms of a national debate over the past few years, "Morning in America" and all this business.

But we have got some serious problems to solve. And I think this committee can help in good measure. Maybe we can get the Chairman back in the presidential race drawing some attention to this.

The CHAIRMAN. Well, I have got my Secretary of Commerce out there in Parkinson. That is the fellow I have been looking for.

Mr. Mercer, I understand you have got another engagement. I have got a couple of questions for Mr. Parkinson. It is up to you, when you want to be excused.

Mr. Parkinson, I am listening to you. And I just about made up my mind when that Semitech came across the plate, I was going to knock that ball over the back fence.

We have been in the textile business for over 30 years trying to get an enforcement of our bilateral agreements. And they dump, they dump, they dump. No one enforces it.

And we never have asked for any kind of subsidy. We have never asked for any kind of government grant loans, or any of these other things, or ever tariffs, if they just enforce the agreement.

We do not want quotas. We just want the agreements enforced. But now comes the Silicon Valley, which is different than Horse Creek Valley. That is where we started down there at the Graniteville plant back in the early 1800s, the first textile plant in all of America.

In Horse Creek Valley, we get no assistance. But the California crowd comes in here with Silicon Valley, and now they have got a billion dollar Semitech.

I have just been sitting here waiting for that thing to come across the plate to lecture this crowd. Because there they get into a little bit of trouble, all of a sudden they get a $300 million offset or whatever it is with respect to tariffs on semiconductor because Silicon Valley is in trouble.

And we get a billion dollar kind of operation to help them manufacture. Is that necessary? You are saying from your testimony, there is nowhere to get the financing in order to modernize, in order to compete.

Is that what you are saying?

Mr. PARKINSON. Well, let me say that I am very sympathetic to what you are saying. I have never been a member of Silicon Valley or the Semiconductor Industry Association. Because Micron has not agreed with a lot of their government oriented views.

I did sit in a meeting of Semitech here a couple of weeks ago. The impression that I had was that it was largely private industry oriented, where we would get together and pool our resources in reviewing chemicals, developing equipment that would be of common use to all of us, sharing manufacturing techniques as opposed to say designs which are unique to each company, and through that mechanism, have a better ability to compete.

So I am not here advocating necessarily that the government should be involved in it. I think what we need is a joint effort that has never existed in the past, I can tell you.

Each one of us has competed individually, and reinvented the wheel every generation. That is where Japan has really been getting the edge on us in my mind, is that they have had a more cooperative effort on the basic R&D and particularly the equipment.

The CHAIRMAN. Well, a joint effort would be more feasible if the government would enforce this anti-dumping law. In other words, there is a lack of enforcement.

You come all the way around the corner, and you back into another government spending program, because you have not enforced the law in the first place.

Mr. PARKINSON. Well, I think that is right. I do not disagree with you.

I want to say, though, that I think Secretary Baldridge and Clayton Yeutter, have been very courageous, at least in the semiconductor industry.

It has been slow moving. But I will say that they have come through. We have lost 65,000 jobs in the meantime, but certainly, Micron has survived.

The CHAIRMAN. Well, I have lost 100,000 in textiles in the same 5-year period. I have not found them very ccooperative. I get a lot of conversation and no enforcement from them.

Mr. PARKINSON. It is slow moving, I certainly will have to agree. But I am just saying, some action is better than none.

And that would be our view, that they have taken some steps. But we have got to get beyond that, this defensive strategy. To me, it is all reactive. We do everything after. It is a terrible problem, and we do not get on the initiative and get ahead of the learning curve.

The CHAIRMAN. Thank you both very much. We will move to the next panel. We appreciate it. It is very important testimony.

Thank you, Mr. Mercer.

We have now Mr. Richard Darman of Shearson-Lehman and Robert McNeill of the Emergency Committee for Free Trade.

Well, Secretary Darman, we welcome you back. And are you with ECAT, Mr. McNeill?

Mr. MCNEILL. Yes, sir. And old friend of yours.

The CHAIRMAN. Was it not Mr. Mortan Darman? Was he not head of the Federal wool growers?

Mr. DARMAN. Yes, sir, and the head of ATMI, and very sympathetic to that problem of 100,000 people in textiles you are referring to.

The CHAIRMAN. And he was fighting ECAT. I am amazed to see you at the table. This is a cultural shock to me.

Mr. Secretary Darman, we would be glad to hear from you, sir.

STATEMENTS OF RICHARD DARMAN, FORMER DEPUTY SECRETARY OF TREASURY; AND ROBERT McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. DARMAN. Thank you, Senator. I could possibly offer you some comfort and suggest that I am sometimes a cultural shock to my father as well.

I should emphasize, Mr. Chairman, that I am here in my personal capacity, at the invitation of the committee, not representing Shearson-Lehman Brothers, and obviously not representing the administration which I served until April.

I do not have a prepared statement. If you would permit me, I would just like to offer a few introductory remarks.

The CHAIRMAN. Very good.

Mr. DARMAN. First of all, Mr. Chairman, I would underline what seems to me an important point, and that is that this is definitely not a minor issue that the committee is considering.

It is certainly not in the tradition of mere reporting requirements that have come up from time to time in this area.

It seems to me it is important to recognize that the Exon amendment as now drafted is, at least potentially a, radical reversal of U.S. policy favoring increasingly open investment regimes.

I think it is clear that at a minimum it would have a chilling effect on foreign investment in the United States. If it would not have that effect, I doubt that you would have the enthusiastic support of the prior witnesses.

Insofar as it does have a chilling effect on foreign investment—and given, as Senator Riegle and others have correctly recognized, we are so dependent on foreign investment at this stage—it is going to have an adverse effect on U.S. interest rates and growth, to the extent that it discourages that investment.

It would also have adverse effects, it seems to me, on U.S. negotiations under several headings. I mention this only to make sure that the possible basic inconsistency in our policy is addressed consciously.

The United States is continuing to pursue a more liberal investment regime with Canada, on grounds that many have taken to be in the national interest.

I have participated in the past in negotiations with Canada, not only with respect to FIRA, but with respect to the subsequent investment regime, which the U.S. is also seeking to improve.

And the move represented by the Exon amendment goes in the exact opposite direction from the direction we are asking the Canadians to move in. It seems to me, if we enact this, we do not have standing to be at the table making the claim we would make with the Canadians.

Similarly, in the Third World debt negotiations in which I have participated in many sessions with, for example, the Mexican government, we have been arguing vigorously with the Mexicans that they should open up their regime for more equity investment, and allow therefore for a reduction in the relative burden to be borne by debt.

It seems that there is increasingly wide agreement that that is the right direction in which to move, and yet from a policy stand-

point the Exon amendment this is heading in the opposite direction with respect to our own country.

It seems to me unlikely that the Mexicans would fail to point that out to us in future negotiations.

And of course, the same applies in the GATT as well.

Another point, Mr. Chairman, in looking at the legislation, the Senate version of which I had an opportunity to see for the first time last evening, it seems to me that this legislation, if nothing else, merits some further refinement if it is to be advanced at all.

It strikes me as remarkably broad. I have to confess to having been shocked when I read it. Of course, I read about it in reports. But when I read the actual language, it seemed to me to be amazingly broad in both its reach and its remedy.

And it is to be contrasted, drastically, with the pattern of legislation that already exists in this area. You may judge the existing legislation to be inadequate, but at least it is relatively tightly focused.

There is evidence of a fairly careful effort to define what areas would be national-security-sensitive, or particularly sensitive for other reasons—and to define them, and then to design appropriate procedural mechanisms for each.

If you find that legislative framework to be inadequate, which I gather is the general sentiment of the committee, it does seem to me that it is very important not to have quite such a remarkably broad approach as is suggested here.

A few concluding observations: Obviously, it is appropriate to be concerned about U.S. competitiveness. It is not only fashionable, it is right to be concerned about U.S. competitiveness. And it is clear that the Congress is going to be doing something about that.

I think it is important to note that we are, for better or worse, two-thirds a services economy now. Our comparative advantage is very heavily in services now.

If we wish to take full advantage of that comparative advantage in the international environment, we have to have a more liberal investment regime abroad so that we can take advantage of the technology we have invented in the services sector in order to produce returns from abroad to this country.

So it seems to me that it is counterproductive, from the standpoint of an interest in our balance of payments problems, to be closing the international investment regime in exactly the historical context where the U.S. may have most to gain by opening it.

Senator Exon, I have heard you this morning state that this is merely an optional tool. I can only suggest that, agreeing with Senator Danforth, that is not my reading of the text.

But even if it were made merely an optional tool, I think it would have an enormous chilling effect as the U.S. has consistently claimed exactly such optional tools in the hands of Canadians and Mexicans and others have had on U.S. investment abroad.

I have heard exactly that same argument—that is is "merely optional"—in arguing with our counterparts from other countries.

Finally, I might just note that I am originally from the State of Massachusetts. Like a good deal of this nation, Massachusetts has grown enormously over the centuries. And like a good deal of this nation, Massachusetts was once essentially foreign owned.

This country has benefitted enormously from a free flow of capital into the country; almost uniquely among nations of the world.

Why in the world we would want to reverse the pattern, or threaten to reverse that pattern, I cannot understand at this point.

I can well understand a concern for balance of payments. I do not think this legislation would help; it would hinder.

I can well understand the concern about raids, and unfriendly takeovers that in some cases can have destructive effects.

But that, it seems to me, is being addressed under a different legislative heading, as it ought to be.

I can well understand concerns for a level playing field. But this is an area in which we should be trying to level the playing field in the direction of more openness abroad; not more closedness here, because it is in our pure, straightforward, national interest.

That, at least, is my perspective, Mr. Chairman. And I find myself in the awkward position of being in disagreement with some members of this distinguished committee with whom I think I have never disagreed before.

But these are my views, and having been asked to present them, I have done so.

Senator DANFORTH. And agreement with at least one with whom you have sometimes been in disagreement.

Mr. DARMAN. Yes, sir.

The CHAIRMAN. We thank you.

Mr. McNeill.

Mr. MCNEILL. Mr. Chairman, I have testified many times, but normally before the Senate Finance and House Ways and Means Committees.

I have always had three great fears. The first was that I would someday have to testify before this committee with you in the chair, sir.

The second fear I have always had was that I might have to follow Dick Darman as a witness.

The final fear is that I would be the final witness at 5 minutes until 12:00 in the morning.

I am pleased to be here, sir.

We in ECAT recognize the need for the President, perhaps, to have additional authority with respect to national security determinations, and with respect to incoming foreign investment.

I think the American business community as a whole, Senator Exon, perhaps is in agreement with that part of the amendment.

We do believe, however, that the statute before the committee fails to properly balance competing considerations.

First, we are most concerned that the legislation casts far too wide a net in restricting foreign investment. We are terribly concerned, not with the national security words, but we are concerned with the words, quote, impairment of essential commerce, end quote.

And we are further concerned that the amendment would give to the President the authority to consider the impact on the economic welfare of domestic industries.

The terms, "essential commerce" and "economic welfare," we believe, are far too vague and imprecise, and we are most concerned with these provisions of the amendment.

We are also concerned that the proposed legislation is unnecessarily broad, because it covers a variety of transactions that we think are questionable.

In order to protect our national security interests, it seems to me that the legislation should focus on the control of an American company by a foreign investor.

We do not believe it necessary to restrict transactions such as joint ventures and licensing arrangements. We think, in this respect, that the legislation is also far too broad.

Secondly, we in ECAT are concerned that the proposals could undermine United States treaty obligations, as well as overlap and possibly conflict with existing United States statutes.

In the formal statement that I have given the committee, I list a variety of eight statutes and international obligations that the United States has undertaken that seem to be out of synch with the proposed amendment.

Third, we are very concerned that the amendment can be triggered at the request of the head of any agency or any federal department. Which means that if the Secretary of Interior is under pressure from a constituency that he is responsible for, he can buck the problem over to the Secretary of Commerce.

If he does, the Secretary of Commerce is required—your statute says that he shall—to initiate the process of investigation.

We are very concerned, as Secretary Darman has just expressed that even though it might be discretionary as to what they do with the results of the investigation, the fact of the investigation could have a very drastic—and I hate to use the word chilling; it has been used many times this morning—but I think a substantial chilling effect.

And finally, our fourth basic concern with the amendment is the message that it will send to our foreign trading partners at a time when we are engaged with them in bilateral talks, as with the case of Canada, to negotiate a free trade agreement that will contemplate foreign investment issues; and also the negotiations that we have underway in the so called Uruguay Round, where investment matters are on the agenda at the insistence of the United States.

The United States spent a lot of its capital, political capital, in getting its trading partners to agree that foreign investment issues should be considered as part of the GATT agenda.

If the statute were to become enacted, it would put the United States, I think, in a very funny position, for example, in respect to Brazil.

Brazil is restricting investment by foreign investors in its computer industry. The United States has long complained about this, and asked for relief from that Brazilian policy.

We recently initiated a Section 301 action against Brazil in order to force Brazil to modify its restrictive investment regime in respect to the computer industry.

Were this particular provision before the committee in effect, it seems to me the United States would be in the same posture that we are complaining about in respect to Brazil, and we think that that would be very damaging to United States interests.

The United States has long and historically fought for open investment regimes abroad. And as my colleague, Secretary Darman,

just said, our objective at present is through bilateral trade talks and multilateral trade talks to try to level the playing field by opening it rather than by closing it, as we believe this proposed legislation would do.

If the committee decides to try to follow Senator Kassebaum's suggestion and Senator Riegle's suggestion, and perhaps tighten somewhat the amendment, we in the business community would be honored and delighted if we had the opportunity to work with the committee in that respect.

I thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF ROBERT L. MCNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. Chairman and Members of the Committee: My name is Robert L. McNeill and I am pleased to have the opportunity to present the views of The Emergency Committee for American Trade (ECAT) on the proposed legislation being considered by the Committee today.

ECAT recognizes the need for carefully drafted legislation that would authorize the U.S. government to investigate and prevent the control of U.S. companies by foreign persons, if such activity would have a direct adverse effect on the national security of the United States. However, any restriction on foreign investment in the United States must take into account the essential role that foreign investment has and will continue to play in American economic development.

We believe that The Foreign Investment National Security and Essential Commerce Act of 1987 fails to properly balance these competing considerations. Instead, the proposed legislation (1) is overly broad (2) does not appear to have been adequately examined with respect to its relationship to existing U.S. laws and international obligations and (3) would be deterimental to U.S. initiatives to reduce trade and investment barriers.

First, the proposed legislation casts too wide a net in restricting foreign investment. Under the proposal, the President would have the authority to restrict foreign investment not only for national security reasons, but also because of impairment of "essential commerce." The President would also be authorized to consider the impact on the "economic welfare" of domestic industries. The terms "essential commerce" and "economic welfare" are vague and imprecise. An Administration would have wide latitude to arbitrarily block foreign investment in the United States for reasons totally unrelated to national security considerations. As a result, companies could easily influence the Executive Branch to initiate an investigation in order to block or delay otherwise legitimate transactions. Legislation designed to protect U.S. national security interests hostile takeovers to thwart their competition. Under these circumstances, the legislation will create an uncertain investment climate and thus discourage foreign direct investment in the United States.

The proposed legislation is also unnecessarily broad because it covers all types of transactions. In order to protect our national security interests, restrictions on foreign investment should focus on the *control* of U.S. companies by foreign persons. It is not necessary to restrict transactions such as joint ventures and licensing arrangements. Regulations under the Export Administration Act and Arms Export Control Act, for example, already provide comprehensive protection against the transfer of both technology and goods that would have an adverse effect on U.S. national security interests. Furthermore, restrictions on licensing and joint ventures would likely inhibit the transfer of important technology to the United States from foreign entities who possess the lead technology in many areas. But for foreign technology, U.S. producers would not now be producing in the United States such diverse products as turbine compressors, polycarbonate plastics, thyristors and state-of-the-art tank engines for the U.S. Army.

Second, ECAT is concerned that the proposals could undermine U.S. treaty obligations and overlap and possibly conflict with existing U.S. laws. The proposed legislation does not appear to have been adequately examined with respect to its relationship and effect on existing U.S. statutes and teaty obligations, such as:

U.S. obligations under treaties of Friendship, Commerce and Navigation (FCNs), many of which afford national treatment and the right to organize and acquire majority interests in domestic corporations;

U.S. commitments under the OECD Code of Liberalization of Capital Movements to abolish restrictions on movements of capital and the OECD Declaration on National Treatment;

Memoranda of Understanding with foreign governments providing for R&D cooperation and coproduction of defense equipment between the countries' defense industries, which can require the formation of joint ventures and the transfer of technology between U.S. and foreign defense contractors. Under the proposed legislation, the time involved in carrying out the necessary investigation and findings would likely prevent proposed joint defense arrangements that are very much in the U.S. national interest;

The Defense Industrial Security Program, which regulates foreign ownership, control or influence of U.S. companies that participate in classified U.S. government contracts;

Reciprocal security agreements providing protection for American classified information in government contracts involving foreign participation;

The Export Administration Act, the Arms Control Act, the Atomic Energy Act, and the Nuclear Non-Proliferation Act which provide comprehensive protection against the transfer of technical data and other goods that would adversley affect U.S. national security interests;

The International Investment in Trade and Security Act which establishes a mechanism to monitor foreign investment in the United States; and

The Interagency Committee on Foreign Investment in the United States (CFIUS) which is designed to consider and review proposed foreign direct investments with potentially adverse implications for U.S. national interests. Few, if any, sensitive investment transactions would be likely to escape this review mechanism. In fact, we believe it preferable for CFIUS to be the mechanism through which an investigation be initiated.

When legislating restrictions on foreign investment it is essential to act with the utmost care and deliberation. In the past, restrictions have been crafted on the basis of specific sectors, such as communications, aviation, and energy. If generic national security legislation is warranted, it must be developed systematically, taking into consideration our existing domestic regulatory framework as well as our international obligations.

Finally, the proposed legislation will send the wrong message to our trading partners and impair newly-launched U.S. efforts to remove barriers to U.S. foreign trade and investment. For example, Brazil currently restricts U.S. trade and investment in computer-related activities on grounds similar to those contained in the proposed legislation. The United States recently initiated a Section 301 action to remove these barriers to U.S. trade and investment in Brazil. Similarly, Canada's foreign investment review procedures have long been challenged by the United States. In its current form, the proposed legislation would be detrimental to ongoing U.S. international initiatives to eliminate trade and investment barriers such as the new round of multilateral trade negotiation in the GATT, the U.S.-Canada free trade area negotiations and the negotiations of bilateral investment treaties (BITs).

In closing, I would like to add that ECAT fully supports efforts by the Congress to enact trade legislaion this year. We believe strongly that legislation is an essential component of an overall strategy to make the United States more competitive. The proposal before the Committee today, however, would do little to promote U.S. competitiveness and in fact is likely to have the opposite effect. The impact and operation of this legislation has not been adequately investigated. Enacting this legislation will discourage vital foreign capital and technology needed to increase U.S. competitiveness, undermine U.S. efforts to eliminate trade and investment barriers in other countries, overlap with, and perhaps contradict, existing U.S. laws, compromise the international commitments of the United States and invite retaliation by our trading partners. In order to eliminate these adverse consequences, a thorough analysis of the proposed legislation should be undertaken focusing on existing domestic regulations and our international obligations and objectives.

The CHAIRMAN. Thank you. Senator Danforth.

Senator DANFORTH. Mr. Darman started by saying that in his view the Exon amendment was not a minor piece of legislation, but rather, that this was really a very, very important issue, and that the Exon amendment would have significant consequences.

How important do you view the issue raised by the amendment? And how important do you see our decision relating to this amendment?

Mr. McNeill. Senator, I think that the amendment is a fundamental amendment. The companies that I represent are now 60, the same 60, Senators, for the past 20 years, essentially.

They are U.S. multinational corporations. They have worldwide sales each year approximating $700 billion, and they employ 5 million workers.

Their whole well being depends on their ability to participate in the world market place. Of the $700 billion in sales of our 60 members, I would assume that perhaps a quarter or a third comes from overseas businesses, including U.S. exports, and including foreign investments.

The interrelationships between the U.S. parents—IBM was mentioned this morning; they are one of our members—the interrelationships in terms of the exchanges of technology and licensing between IBM Europe and IBM U.S. and IBM Japan and IBM Canada, they are unbelievably numerous and complex.

The Exon amendment would affect the ability of U.S. international companies to exchange licensing—to have licensing agreements and to exchange technology, just within its own international corporate framework because a foreign subsidiary of a U.S. firm, by definition, is a foreign person. So it would complicate enormously and immensely the ability of U.S. companies to conduct their business in the international arena.

It is a fundamental thing for us. And we would hope, that if it is to be legislated, that it could be very substantially tightened.

Senator Danforth. Mr. Darman?

Mr. Darman. Senator Danforth, I just wanted to add if I might, that it seems to me that our interest is not just the interest of, say, 60 or 100 large multinational corporations, but it is a much more widespread interest that should be of concern to a large number of ordinary Americans.

We, I think improperly, are running these enormous deficits. We are dependent, like it or not, for the next few years at least, on foreign capital in order to keep our interest rates down.

We do not like this, but the Japanese are accumulating enormous surpluses. We have the potential favorable effect, all things considered, of having that surplus recycled in some large measure into the United States, not just for the big companies, but to lots of small companies, pioneering companies, companies that today may have three employees and be the big growth companies of the future.

Now, everyone of those potential investments, as I understand it, is going to be subject to a freeze, essentially, at the time that somebody's considering it, anytime any head of any department or any agency anywhere in the government can send a letter over to the Secretary of Commerce and get him to initiate this rather remarkable investigatory power.

It seems to me that it promises at a minimum to have some adverse effect on interest rates, which affects everybody, and some adverse effect on capital formation throughout the economy, which ultimately affects everybody.

Senator Danforth. It was interesting to me, just incidentally, that Mr. Parkinson when he testified—very, very strong testimo-

ny—but when he said that when his company needed to find capital, he had to go to Europe to borrow.

Mr. DARMAN. I know that Chairman Hollings has been a leader in making this point, and in criticizing the administration over these last many years for running up these deficits.

But now they exist, domestic and trade deficits. And they are not going to be reversed immediately. They are not going to be reversed overnight.

So, we are going to be in a situation where the U.S. is capital-short for investment, and some major countries have capital surpluses.

If this amendment makes sense—and obviously, I have some questions about it—but if it does, it seems to me it makes sense not in this historical context, but in an entirely different one.

Senator DANFORTH. Now, some of the Senators have said that well—and I think Mr. Mercer also said—well, other countries have investment restrictions, and in spite of those investment restrictions, American business is able to invest abroad.

Therefore, I would guess that their argument is that investment restrictions do not in fact restrict investment; therefore, why not do it. I guess that is their argument.

Did you hear those comments, and do you have any response to them?

Mr. MCNEILL. Well, Senator, if I may take the first crack at that question, there is an OECD code that the United States was in part responsible for—provided the leadership for—providing for the liberalization of capital flows among the OECD countries, which are Japan, Canada, the United States, and the European countries.

I think the problem in respect of investment restrictions is at the present and in the future, a problem of restrictions in the developing world. It is that part of the world, and particularly, the Pacific rim part of that world, which is fast growing relative to the industrial democracies, who we tend to be rather stable in growth.

The market opportunities, both for United States exports and for United States investment, is in those countries. It is in the Brazils and the Argentinas, and the other developing countries around the world.

And it is toward those countries that our investment gun should be aimed in order to get their restrictions hopefully liberalized, and at some time, removed.

And this indeed is a major objective of our government in the Uruguay Round.

So, I believe that while we may be able to invest rather freely in France and Germany, that is certainly not true for the non-OECD countries. It is a very big issue.

Senator DANFORTH. In fact, not only that, but with respect to Japan, one of the objectives in the MOS negotiations has been to open up the possibility of American investment, for example, in the telecommunications industry

Mr. MCNEILL. Yes, absolutely.

Senator DANFORTH. Mr. Darman.

Mr. DARMAN. Well, Senator Danforth, on the question of inconsistencies in the prior testimony, I heard many, of which this was

one—this one being that investment limits do not limit investment, but we should have investment limits in order to limit investment.

There were others of the type you alluded to in saying that we do not want foreign capital, but in order to be financed, we need to have foreign capital.

There were others that said that the fundamental problem is the takeover problem, and the takeover problem would exist with or without this legislation.

There was a host of others that I found at least curious.

But I might just say, on the question you asked, do investment limits limit investment, there is a data base which you can get easily, I think, by requesting it from Treasury or from the foreign countries, in which the foreign countries publish the number of investments that they review, and the number that they turn down.

It is a substantial positive number that is turned down by foreign governments. Those statistics are available. I do not have them at my fingertips at the moment, but they are available from the Administration.

Point one: So yes, they do limit investment.

Number two: The U.S. has always argued, at least the executive branch has always argued, that they limit investment to a greater extent than represented by those statistics.

And I believe this to be true. They limit investment because once it becomes a pattern that investments are turned down by a government, a whole host of investment ideas that are in the germination stage in the investment community that might be potential investments in a given country are shut off, because it is not worth the time to invest in the effort to put the deal together for that country.

Turning it around, you have to say, what is the U.S. behavior likely to be like if we have this legislation? It seems to me, as one who spent a lot of time in bureaucracy, in six cabinet departments in four administrations, that it is close to inconceivable to me that under this law there will not be, as a behavioral matter, whatever the intent, a substantial number of turndowns of foreign investment.

It is in the nature of our political system. There will be such. And as soon as there are, there will be a chilling effect on foreign direct investment in the U.S., just as there is in reverse.

Senator DANFORTH. This amendment states that at the request of the head of any department or agency of the United States, the Secretary of Commerce initiates an investigation.

Mr. Darman, do you know, or can you approximate, how many departments or agencies exist in the Federal Government?

Mr. DARMAN. Well, the problem is with the term, agency, which would have to be defined under this statute. But just loosely, I would say it must be over 100.

Senator DANFORTH. I am told that it includes such things as the Washington Metropolitan Transit Authority; the Pennsylvania Avenue Development Corporation.

I mean, obviously, those are ridiculous examples. But I am told that virtually anything that moves——

Mr. DARMAN. That is why I say it would have to be defined. But I think a reasonable conventional definition will get you over 100 immediately, and you could probably get it up to 1,000.

Senator DANFORTH. Where else—you said that the legislation was overly broad.

Where do you consider the legislation to be overly broad? I would gather that in applying this mechanism not only to mergers and acquisitions, but to joint ventures and licensing, that would be an example of overbreadth?

Mr. DARMAN. Yes, although in the previous line, there are a couple of major examples. The phrase, national security, and the phrase, essential commerce.

What in the world do we mean by "essential commerce"? That is a remarkably broad phrase.

And even the phrase, national security, as I suggested at the outset. In the past, when this kind of issue has come up, the Congress has attempted to determine what exactly is the sectoral interest in national security, and has targeted to that.

And we, the U.S. Government, in arguing with foreign countries, have said, we do not accept a broad screen under the heading national security, because anybody can claim that most anything is a threat to national security.

So that would be another set. I am going backwards in the legislation to the very beginning.

"Any department" seems to me to be unnecessarily broad. Certainly including agencies seems to me to be curious for the reason that you suggest.

Those alone it seems to me create a major problem. And that is only dealing with the first seven lines of the legislation.

Senator EXON. Would you yield for a question right there?

Senator DANFORTH. Sure.

Senator EXON. Assuming that we could correct your concerns in this area, would you enthusiastically support the legislation otherwise, Mr. Darman?

Mr. DARMAN. No, sir.

Senator EXON. Thank you very much.

Senator DANFORTH. Mr. Darman, the question again as to whether this is mandatory legislation or permissive legislation, I stated before, you stated in your testimony.

But the whole thrust of it seems mandatory to me. The Secretary of Commerce shall immediately make an appropriate investigation no later than 45 days after beginning an investigation under the section, the Secretary shall report to the President.

Subject to the provisions of subsection F of this section, the President shall take action for such time as the President considers appropriate to restrict, suspend or prohibit such acquisition, merger, joint venture, licensing takeover, or other attempts to gain control of a person engaged in interstate commerce.

It does seem to me to be mandatory in its nature, and as you say, very broad.

I only have one other question, unless you want to respond further to that. I just have one other short question, and then I am finished, Mr. Chairman.

And it is this. You have worked for Secretary Baker for how many years?

Mr. DARMAN. Six and a half in the Reagan administration. We worked as well, side by side, in the Ford administration.

Senator DANFORTH. You have a pretty good knowledge of what he means when he says something?

Mr. DARMAN. Well, he is intentionally elliptical at times, but generally, yes.

Senator DANFORTH. I would like you to give me your interpretation, if you have one—maybe this is elliptical, I do not know, I do not think so—I would like your interpretation, if you have one, of the following sentence.

This is a letter that he wrote me, dated yesterday. And it relates to this provision, and it relates to the trade bill.

Secretary Baker says: "If this provision"—that is, the Exon amendment—"is in the final bill, I would find it particularly difficult to recommend that the President sign the bill."

What is your understanding of what the Secretary means by that?

Mr. DARMAN. What he means, I think, is—well, it is really of course not at all fair that I put words in his mouth, obviously. But if you would like me to act as sort of an interpreter of bureaucratese——

Senator DANFORTH. Is this veto bait? That is what I am asking.

Mr. DARMAN. What he means is, he would recommend a veto, but given that this has come up on short notice, there has not been time to get Presidential approval to actually state that the administration would veto it.

That is the kind of language you use when you know you want to recommend veto, but you do not have the authority to say that the administration will stand behind the veto.

Senator DANFORTH. Do you think that this would significantly increase—if this were included in the bill, would this Exon provision significantly increase the possibility that the trade bill would be vetoed by the President?

Mr. DARMAN. My personal judgment is that it very definitely would. I think this is, as I said at the outset, a radical departure.

I recognize the seriousness of intent on the part of those who favor this. But as drafted, it seems to me to be a truly radical departure from our own investment policy.

Senator DANFORTH. I thank both witnesses, and I thank you for your courtesy, Mr. Chairman, in indulging me in these questions.

The CHAIRMAN. Thank you. Senator Kassebaum?

Senator KASSEBAUM. I really do not have a lot to add. I think your comments are both quite interesting.

I guess I would like to go back to the Hart-Scott-Rodino legislation, which I refer to through a couple of questions, and ask both of you if you think in an effort to tighten up the legislation; to draw it perhaps in such a way that it does not allow significant areas of ambiguity, perhaps.

I really do support Senator Exon's effort to get the committee's attention, and all other interested parties' attention, to what I think is a very serious and important issue.

But if we could perhaps, and it would not be legislation coming through this committee, the Hart-Scott-Rodino bill, to reflect, as well as an antitrust review, a national security review, do you think that that would have a chilling effect on investment?

Mr. MCNEILL. Senator, I cannot answer that, because I am not familiar with the piece of legislation that you are referring to.

Senator KASSEBAUM. Well, Hart-Scott-Rodino legislation requires that any merger, acquisition, by corporation and now partnerships as well must be subject to a review of antitrust implications.

And I think there is a 30-day period for this review. So what it does do is simply allow the FTC and the Department of Justice to conduct such a review before it can be completed, for any merger or acquisition.

It would seem to me that if we have that review process for one thing, and the Secretary of Commerce said, well, antitrust implications are inherent in every sort of merger, and in all other foreign countries, they are familiar with this.

Well, I think they are familiar with national security considerations as well. And if it can be drawn in such a way, it seems to me we are not going beyond what would be by nature already a consideration in many countries.

I really find it something that I do not think we need to fear. I think well drawn, it provides us a certain sense of security for our own industries, and for, as a matter of fact, some thoughtful investment in trade policies that should not provide the chilling effect that we are afraid might happen.

Mr. DARMAN. Well, Senator Kassebaum, I think yes—if you were to tighten it that way—yes, it likely would have less of a chilling effect.

Again, though, it depends a little on the definition of national security. Some other countries have used national security to cover virtually everything and anything that they wish to.

If we were to behave in the same way, it would have as comprehensive a chilling effect as if you had never chosen to limit it.

I might just say that I heard Secretary Baldrige say also, and I think quite correctly, that there are other protections of what might be the national security risk involved. I think it would be worth at least looking at whether those other protections are adquate, if you are going to be looking at narrowing this.

I think it would be important to narrow the definition of national security itself, so that you do not just have a broad heading under which all these other economic claims would fit.

Then finally I would say—and this, I know, is what Senator Exon was getting at when he asked me, if you fixed all of this in one way or another, would I support the legislation; he was correctly pointing out that I probably would not personally favor it under any circumstances.

I think we have a national security interest—I am sorry to go so much against the grain of the committee—I think we have a national security interest in getting this foreign investment.

In other words, I think the premise that there is a national security threat from foreign investment per se is itself not headed in the right direction.

I think our national security interest goes in exactly the opposite direction, although I recognize that that does not seem to be the prevailing view of the committee.

I remember being in the Ford Administration in 1975–76, and having to come up and testify because following the oil price runup and the accumulation of capital by the Saudis, there was this fear that we were going to lose control of the United States to the Middle East by virtue of their buying up America in one way or another.

And we came up and were rather unpopular resisting Congressional efforts to restrain investment. But I think with the benefit of hindsight, we can say, thank goodness for the recycling of all that capital.

The U.S. was a net beneficiary. I think the same thing is going to be true over the next decade; we will thank goodness that we are able to attract Japanese capital and other capital if we keep an open investment regime.

Senator KASSEBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Exon.

Senator EXON. Thank you very much, Mr. Chairman. Thank you, Mr. Darman, thank you, Mr. McNeill, for coming here and giving us your views.

I would first like to say that what I am listening to here today seems like some nitpicking, maybe serious nitpicking. But it kind of reminds me of the old story; you know, when the church burned down, the proposal was to build a new church. And everybody in the congregation, being good Christians, were for that; they thought they needed a church.

But half the congregation fought the location, and the church was never built.

What I am saying to you is, we have got problems, whether you realize it or not. And I do not believe that more of the same is going to cure these problems.

There is all kind of nitpicking going on with regard to this legislation, and I have never seen anything that anyone has ever drawn, including this Senator, that cannot be changed and possibly made better or possibly made worse; I mean, that is a given anytime you write any kind of piece of legislation.

If I thought, Mr. Darman, that you were really concerned about tightening up—or use whatever phrase you want—this legislation to make it meaningful and helpful to get the job done that I think is necessary, then I would say fine, let us get together.

But I appreciate your remark. You properly analyzed my taking time to ask you that short question. The fact of the matter is, you are against this legislation period.

So we could sit here and ask you questions all day about this word and that word. I would simply point out that the legislation starting on line 13 says: Subject to the provisions of Section F of this section, the President shall take such action for such time as the President considers appropriate to restrict, suspend, prohibit and so forth.

I would simply say to you, once again, that if the President thought it was not appropriate, regardless of the evidence present-

ed to him, after an investigation by the Secretary of Commerce, nothing would happen.

I do not know what kind of a chilling effect that would have, but I worry more about Presidents of the United States not taking action, as this President has not in the past, than I do overreacting.

This has been termed a radical proposal. Now, Mr. Darman, many Republicans have accused me of lots of things over the years in my political career, but never before of being radical.

It is not in Jim Exon's nature to be radical. I would hope that if you are sincere about wanting to improve the legislation—but I suspect you are not, and that we could save all these window dressing questions by just saying you are against the legislation period, and not pick at the pieces of phraseology.

I was interested in your statement that we are now a two-thirds service economy. And since you have been long associated with this administration in many important positions, I suspect that your figures are accurate.

It is shocking to me that we are now a two-thirds service economy. I wonder how long we are going to be able to survive as a world power when two-thirds of our present reliance is on the service industry economy alone.

What was the percentage of our reliance on the service economy, which is now up to two-thirds, what percentage was that in 1980, do you know?

Mr. DARMAN. Almost identical. In fact, the funny thing is that we speak about a decline of manufacturing in the United States. It is a selective decline.

Manufacturing as a whole, as a percent of gross national product, has bumped around since 1950 between about 18 percent of GNP and about 25 percent of GNP. It has averaged around 22 percent of GNP.

The largest piece of the economy has consistently been the service sector; over 60 percent, and agriculture is the remainder.

Those gross figures of gross national product have remained about the same, bumping around a little bit, plus or minus 2 or 3 percent, since the 1950s.

What has changed is the pattern of employment. Agricultural employment has gone way down, and manufacturing employment has gone way down, and service sector employment has gone way up.

But if you speak in terms of the percentage of GNP involved, the service sector has been about the same for these past few decades.

Senator EXON. So what you are saying then is that in the last six or seven years, we have more than doubled our national debt, we went from being the largest creditor nation in the world to the largest debtor nation in the world, and that had nothing to do with our trade imbalance?

Mr. DARMAN. No, I was not saying that. That has a lot to do with our trade imbalance. I do not favor our trade imbalance. I do not favor our domestic deficit.

I have at times been correctly the beneficiary or victim of publicity saying that I opposed the administration from within on some of these issues concerning the deficits.

And now that I am out I can say the more freely that that is certainly the case. I have disagreed with some elements of the policy with respect to deficits.

I do not deny for a moment that there are serious problems with both deficits. But I do suggest that there are other measures, important measures, that this committee has before it, and other committees of the Congress have before it, that will more directly get at our trade balance than this measure will.

I have even suggested, and I know that you disagree, but I will just repeat, that this may have a counterproductive effect on our trade balance, this particular measure.

Senator EXON. Let me ask you this one more question.

You started out by saying you were here not representing anyone essentially except yourself. But it is true that you are presently employed on Wall Street as managing director of Shearson-Lehman Brothers; is that correct?

Mr. DARMAN. Yes, sir, that is correct.

Senator EXON. No further questions of this witness. But I do have a question of Mr. McNeil.

Mr. McNeill, I have a somewhat more hopeful perspective of your testimony. I believe at one place you went so far as to indicate that the basic thrust of the Exon amendment was something that you could generally agree with.

Is that correct?

Mr. MCNEILL. Yes. I do not think that you would find many business people objecting to the President having the authority to restrict or prohibit a foreign investment in an industry in the United States that was deemed to be critical to the national security.

So in that respect, we are sympathetic with your purpose.

Senator EXON. Do you think we should consider building a new church?

Mr. MCNEILL. I think, Senator, the current church is okay. It is standing, and it seems to work.

Senator EXON. Well, what seems to work? The present arrangement?

Mr. MCNEILL. Yes. I was rather impressed with the story that Secretary Baldrige told this morning.

I have served in government for a number of years, including the Commerce Department at one time. And I believe what he said is reflective of the facts.

There is in place a series of procedures, two of which the Secretary talked about, one is the Interagency committee, and one is the Commerce Department review and screening of all foreign investments.

It seems to me that the church does work. The structure is there and it does work.

My sympathy with your amendment, if I may take my hat off as a representative of ECAT, and it is very hard to do, and some of my members are sitting right behind me looking at me and waiting for what I am going to say, if I could just as an individual express this comment.

If the President wants to deny a foreign investment for national security reasons, the primary instrument available to him is the International Economic Emergency Policy Act, IEEPA.

But in order to invoke that act, the President has to declare a national emergency to make its powers operative. So within the current church, if another pew were added that gave the President a concurrent authority along with the authority of IEEPA, where he could take the kind of action that your amendment contemplates, if limited to national security, I would not myself find that objectionable.

I think Senator Riegle hit on this as the problem; Senator Kassebaum and others also did this morning. Senator Wilson also touched on it, that the broadness of the proposed statute is a problem.

The church is there. There are authorities available to the President. But the primary one, IEEPA, involves the requirement that he declare a national emergency. And that is something presidents are very reluctant to do, in part because of the castigation that might be involved toward other countries.

Senator EXON. Well, it is certainly talking about a chilling effect. It certainly would have had a chilling effect if the President had been forced to move in the Fujitsu proposition by invoking the national emergency part of the law.

And you are hitting exactly on one of the main reasons for this, Mr. McNeill, and that is that it is an additional tool I thought that would provide some authority for the Secretary of Commerce, and the President, whoever they are, to move without overreacting.

Regarding your opposition to joint ventures and licensing agreements, I would only remind you that certain things that might be addressed through preventing a takeover could be implemented to—not the interests of the United States, especially in national security matters—by joint ventures and licensing agreements.

And therefore I think that anything we have to do in this area, so long as we keep it at the discretion and what the President considers appropriate, which is clearly in the bill, would give some leverage to the President but not have the chilling effect that has been adversely described here by some witnesses.

Let me ask this final question——

Mr. MCNEILL. If I could just comment, Senator?

Senator EXON. Yes.

Mr. MCNEILL. If the provisions concerning licensing of technology were to remain in, I think we would have to pray in a different church.

Senator EXON. Well, I do not know how effective the church—you seem to think the church has been acting pretty well. I am not sure that that is true, and many of my constituents do not think that that is true, and I think the major number of people on this committee do not think that we have had an effective means to protect the vital interests of the United States.

Let me ask this question. Once again, I would say that there is nothing in this piece of legislation that I introduced, languagewise, that is locked in concrete. And I think it is wonderful that people are coming forth now and saying, maybe we can tighten it up; maybe we can change this.

I am not insisting on this legislation passing exactly as written. Would you be willing to give us your expertise, Mr. McNeill, and

that of your organization, to making some suggested changes in this legislation?

Would you be interested in working with us to help provide the language that I might be able to agree to?

Mr. MCNEILL. Senator, I am paid by 60 separate companies, and I would have to check with them. I would presume that they would have no problem.

This is a political process, and we are testifying before this committee as a part of that process, and I would find it difficult not to accept that invitation, because I think it is a sincere one, and one that I would like to respond affirmatively to.

But I would have to check with my member companies. I am meeting with a lot of them tomorrow.

Senator EXON. I understand Mr. McNeill. If you would get in touch with them and let us know, I would appreciate it very much.

Mr. Darman and Mr. McNeill, thank you very much. And thank you very much.

The CHAIRMAN. We thank you both for your appearance here today. Thank you very much. The committee is in recess.

[Whereupon, at 12:37 p.m. the committee adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF BP NORTH AMERICA, INC.

BP North America is a wholly-owned subsidiary of the British Petroleum Company, one of the world's largest international oil and natural resources groups. BP is currently engaged in ten basic businesses: oil and gas exploration, production and distribution; oil supply; refining and marketing; chemicals and plastics; minerals; coal; nutrition; shipping; detergents; computer software and information technology; and a range of ventures which exploit advanced technology. About 55% of the Group's $26.4 billion in fixed assets are in the U.S., and BP regards itself as an integral part of the commercial landscape here. BP North America and the Standard Oil Company (soon to be merged into a single BP U.S. subsidiary) currently provide employment for about 46,000 people in the U.S.

As one of the largest and most successful foreign investors in the U.S., we find the additional restrictions proposed in the Exon amendment to S. 907 to be both unnecessary and unwise. We reach this conclusion on the basis of our prior U.S. operating experience and our plans for possible future investment in the U.S.

BP has experienced first-hand the range of existing statutes which already limit foreign investment, particularly in sensitive areas of the U.S. economy. A Committee on Foreign Investment, consisting of representatives from the Departments of Defense, Treasury, Commerce, and State, as well as from the Council of Economic Advisors and the Trade Representative's Office, already exists to review foreign direct investments that might have national security implications. Certain sectors of entire industries such as communications, nuclear power and aviation, are already off-limits to foreign investors. Numerous restrictions apply to foreign companies seeking to enter into classified defense work. Yet, the Exon amendment would go far beyond these existing restrictions, granting discretionary authority to this or future Administrations to prohibit arbitrarily new foreign investment in nearly every industrial sector of the U.S. econony.

As a result, the Exon amendment would discourage foreign investment in the U.S., thus denying capital which is helping to finance competitiveness, growth and job creation, and which is an essential element in the financing of the current account deficit. The benefits of foreign investment are well documented. U.S. affiliates of foreign firms employed over three million Americans at the end of 1986, with a payroll in excess of $70 billion. They paid over $8.5 billion in U.S. income taxes (plus additional state, county and local taxes). Foreign investors bring in new technologies and innovative management techniques; provide capital infusion for faltering firms; and provide greater competition, with resultant consumer benefits.

BP's own experience in the U.S. provides a good example of the benefits that foreign investment can bring. BP pressed ahead with exploration in Arctic Alaska when many other companies held back in the 1960s. Since 1977, 5 billion barrels have been shipped from Prudhoe Bay in Alaska to refineries in the USA—equivalent in energy terms to the Hoover Dam operating at peak power for 256 years—or to the oil consumption of Chicago for 84 years. BP's commitment of capital and engineering skills to oil exploration in Alaska has resulted in a major contribution to U.S. national security and the U.S. economy. A favorable U.S. attitude toward foreign investment was key to BP's decision to invest in Alaska and elsewhere in the USA.

One of the major problems with the Exon amendment is that in an effort to address a perceived and limited national security problem, it casts a net so large as to change fundamentally the basic rules governing foreign investment in the U.S. Even if one were to accept the argument that additional legal safeguards are necessary to protect vital defense-related industries, the scope of the Exon amendment goes far beyond this purpose. Language such as "essential commerce," "joint ventures and licensing and takeovers," and "other attempts to gain control of a person engaged in interstate commerce in the United States so that such control will not threaten to impair the national security or essential commerce," is so broad as to have a potential chilling effect on foreign investment in almost every sector of the

U.S. economy. For example, under such a sweeping standard, several of BP's recent acquisitions, for which we believe there is a sound, objective economic case and which will result in the strengthening of the acquired U.S. company, could have been examined, delayed, and perhaps jeopardized, solely because a competitor was effective in charging that BP's entry into that U.S. business would "impair essential commerce." Is this what the amendment's supporters intend? We hope not.

There are other problems with the Exon amendment as well. It appears to have been drafted in haste. It contains no *de minimus* or materially standard. There is no provision for judicial review in the event of an adverse Administration finding. The substantive standards which the Secretary and the President must take into account before making a finding are either ill-defined or not defined at all. Most importantly, the amendment would seem to raise Constitutional questions involving illegal taking of property and vagueness.

Our final objection to the Exon amendment stems from the fact that BP is a multinational company whose business is governed by the laws of many countries. Passage of the Exon amendment is almost certain to result in retaliatory measures being adopted by countries which currently welcome investment by multinationals—including most of the largest U.S. corporations. The amendment runs counter to U.S. obligations in a number of friendship, commerce and navigation treaties, to ten pending bilateral investment treaties, and the OECD Capital Movements Code and Declaration on National Treatment. At a time when the U.S. is urging its trading partners, in particular in the GATT negotiations, to lift artificial barriers to U.S. trade and investment, the Exon amendment sends precisely the wrong signal. For major foreign investors such as BP, who have already made substantial commitments to the U.S. economy and who hope to build on those commitments in the future, the Exon amendment sends precisely the wrong signal as well.

Charles O. O'Brien
Executive Vice President and
Chief Operating Officer

CIBA-GEIGY Corporation
Ardsley, New York 10502-2699
Telephone 914 478 3131

CIBA-GEIGY

June 8, 1987

Honorable John C. Danforth
United States Senate
Washington, D.C. 20510

Dear Senator Danforth:

I am writing on behalf of CIBA-GEIGY Corporation ("CIBA-GEIGY"), a wholly-owned subsidiary of CIBA-GEIGY Limited, Basle, Switzerland. CIBA-GEIGY, which is engaged in the discovery, development, manufacture and distribution of a wide variety of chemical products, employs over 13,000 people in the United States.

We have some grave concerns regarding an amendment to the trade bill that Senator J. James Exon (D-NE) and Senator John Breaux (D-LA) will offer during Commerce Committee markup on June 16.

This amendment would give sweeping new powers to the President and Secretary of Commerce to prohibit mergers, acquisitions, joint ventures and licensing arrangements involving foreign investors on the grounds that they present a threat to national security or essential commerce.

A number of laws and mechanisms already restrict foreign investment in particularly sensitive areas of the U.S. economy, notably classified defense work. For example, a Committee on Foreign Investment, consisting of representatives from the Departments of Defense, Treasury, Commerce, and State, as well as from the Council of Economic Advisors and the Trade Representative's Office, already exists to review foreign direct investments that might have national security implications.

This amendment would discourage foreign investment in the U.S., thus limiting capital which is helping to finance competitiveness, growth and job creation. Foreign investment, which is a necessary component in the financing of the federal budget deficit, has provided both funds and technology for U.S. business expansion, and has created jobs for American workers. The safe haven the U.S. provides for foreign investment is one of the great strengths of our economy. Even if the restrictive provisions in the amendment were not broadly applied in practice, they would be likely to discourage foreign direct investment in the U.S. by adding to the uncertainty of the investment climate.

This amendment is contrary to long-standing U.S. policy of maintaining an open economy and encouraging other countries, developed as well as developing, to do the same.

We urge you and your colleagues to vote against inclusion of an Exon/Breaux amendment in the trade bill.

Very truly yours,

Charles O. O'Brien

CO:FM4/q-a

THE SECRETARY OF THE TREASURY
WASHINGTON

June 9, 1987

Dear Jack:

I wanted to commend and thank you for your staunch support of United States international investment policy during the Senate Commerce Committee's discussion of the Exon Amendment at its recent markup.

I share wholeheartedly your concerns that the Exon Amendment would, if enacted, have a chilling effect on foreign investment in the United States. It would put the United States in the company of those countries whose investment climates we are trying to improve.

With respect to Congressional concerns over national security, the United States already has sufficient legislation to protect our national security interests. Existing legislation focuses on the risks posed by certain aspects of an investment, including national security, rather than on the nationality of the investor.

It is indeed ironic that while other actions of Congress represent concern about the negative effect of national security limits on exports, the proposed amendment would create a new national security limitation on investment within our borders. Foreign investment brings us capital, jobs, new technology and management skills. While I recognize that the proponents of this amendment believe it economically sound, I believe that amendments of this nature could cause grave damage to the U.S. economy.

I hope that we can find some way to prevent the Exon Amendment from becoming part of the Senate Trade Bill. The presence of a similar provision in the House Trade Bill makes the result particularly dangerous. If this provision is in the final bill, I would find it particularly difficult to recommend that the President sign the bill.

The Office of Management and Budget has advised me that there are no objections to the submission of this letter to the Congress, and that the views expressed herein are consistent with the program of the President.

I urge you to continue your efforts in support of United States international investment policy. You are correct that much is at stake for all of us.

Sincerely,

Jim

James A. Baker, III

The Honorable John C. Danforth
Ranking Minority Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, D.C. 20510

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

June 9, 1987

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

Dear Chairman Hollings:

I understand that the Commerce, Science, and Transportation Committee is considering a legislative proposal to require review of certain direct investments in the United States.

The proposed legislation would require the Secretary of Commerce to investigate and authorize the President to block any merger, acquisition, joint venture, licensing or takeover that would, in his judgment, have a negative impact on U.S. national security or essential commerce.

As you know, an interagency committee already exists to review foreign direct investments that might have national security implications, but the proposed legislation would appear to broaden this procedure significantly. Moreover, the term "essential commerce" is so broad and ambiguous, as I read the proposed legislation, that it could lead to the establishment of an approval process for almost any foreign direct investment in the United States. This approach would be contrary to our long-standing national policy of maintaining an open economy and financial market and encouraging other countries, developed as well as developing, to do likewise in their own interest and in the interest of a better allocation of scarce savings in the global economy. Even if the proposed legislation were not broadly applied in practice, it would be likely to discourage foreign direct investment in the United States by adding to the uncertainty of the investment climate.

As you know, it is not in the best interests of the United States to discourage inflows of foreign capital. Given the enormous size of our budget and current account deficits, and the prospect that they will not soon be eliminated, any measure that discourages new foreign investments in the United States or causes the liquidation of existing investments is likely to exacerbate downward pressure on the foreign exchange value of the dollar and to put upward pressure on U.S. interest rates with negative effects on the overall rate of productive investment in our economy. Indeed, increasing our rate of investment is essential if we are to maintain our competitiveness and have adequate industrial capacity to service our huge and growing international debts. Moreover, foreign direct investment inflows themselves often enhance the productivity of our capital stock by introducing new technologies and increasing competition. In addition, measures such as the proposal before you which would police or restrict foreign investment in the United States may invite retaliation or, at least, undermine our efforts to negotiate the elimination of barriers abroad faced by U.S. investors.

I hope you will find these comments and suggestions helpful in your deliberations.

Sincerely,

Paul A Volcker

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

June 10, 1987

The Honorable John C. Danforth
Ranking Minority Member
Senate Commerce Committee
United States Senate
Washington, D.C. 20510

Dear Jack:

In response to your request and in view of the Commerce Committee's imminent consideration of Senator Exon's proposal for a new review mechanism for certain inward foreign direct investment, I wanted to make clear my opposition to that proposal.

No one can challenge the notion that national security concerns warrant special consideration in any U.S. Government policy. In its September, 1983 policy statement on investment, the Administration recognized that national security was a necessary exception to our basic principle that foreign investors should be treated no less favorably than domestic investors. Nevertheless, there is always the danger that the exception can become so broad that it can begin to erode the principle.

I believe that Senator Exon's proposal does that. It is excessively broad in its scope and limited in the flexibility it provides the President once an investigation is conducted. The notion that governmental review may be necessary to determine the economic effects of foreign direct investment in the United States runs directly contrary to our belief that investment flows which respond to market forces provide the best and most efficient mechanism to promote economic growth here and abroad.

Over the last four years, we have worked bilaterally and multilaterally to reduce the role of governmental intervention in the area of investment. The Uruguay Round of multilateral trade negotiations will be examining the trade restricting and distorting effects of governmental investment measures. As you know, investment is an important element in our negotiations with Canada on a free trade area. Our international position would certainly be undercut if the Exon amendment were adopted.

Most disturbing, new procedures are not needed. Our antitrust laws are quite adequate to protect competition in the domestic marketplace while permitting the U.S. economy to adjust to the challenges of the international marketplace. The Defense Department has adequate authority to insulate militarily sensitive work which might be involved in a takeover. The Committee on Foreign Investment in the United States (CFIUS) provides a satisfactory vehicle for the Executive Branch to review individual investments which raise "national interest" questions.

The United States remains the single largest foreign investor in the world. Our interest remains in reducing the degree of government interference in this area practiced by others. Senator Exon's proposal could sacrifice that objective without improving our ability to protect legitimate national security interests.

The Office of Management and Budget has advised me that there are no objections to the submission of this letter to the Congress, and that the views expressed herein are consistent with the program of the President.

I want to thank you for your continuing efforts to support the interests of the United States in the area of international investment.

Sincerely,

Clayton Yeutter

The Business Roundtable

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SAMUEL L. MAURY
Executive Director

June 10, 1987

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce,
Science and Transportation
United States Senate
508 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Business Roundtable would like to take this opportunity to provide the Committee with its views on the Foreign Investment National Security and Essential Commerce Act of 1987.

The Business Roundtable recognizes the desirability of legislation that would authorize the President to prevent efforts by foreign persons to gain control of U.S. companies if such activity would directly threaten the national security of the United States. However, The Roundtable believes that any restrictions imposed on foreign investment in the U.S. must take into account the critical role of foreign investment in the U.S. economy.

The Roundtable believes that the proposed legislation, while well-intentioned, has fundamental flaws. Left in its current form, the bill could seriously undermine the competitiveness of several U.S. industries. First, the legislation is too broad. Under the proposal, the President would have the authority to restrict foreign investment if it threatens to impair the national security or essential commerce of the U.S. The President would also be required to consider the impact of foreign control on the economic welfare of domestic industries. The terms "essential commerce" and "economic welfare" are too vague. An Administration would have wide latitude to block foreign investment for reasons totally unrelated to national security considerations. In addition, the proposal goes far beyond the issue of foreign control of U.S. companies. Under the legislation, joint ventures and licensing arrangements are also subject to review and possible prohibition. The Roundtable believes that regulations under the Export Administration Act and the Arms Export Control Act already provide sufficient authority to prevent the transfer of technology and goods that would threaten U.S. national security interests. Such restrictions on licensing and joint ventures have the potential of inhibiting legitimate transfers of state-of-the-art technology crucial to the operations of U.S. industries.

Second, the proposal is duplicative of, and potentially inconsistent with existing U.S. laws and international obligations. U.S. commitments under treaties of Friendship, Commerce and Navigation, the OECD Code of Liberalization of Capital Movements and other international agreements need to be examined in light of the new authorities provided under the bill. The Export Control Act, the Arms Control Act, the Nuclear Non-Prolefiration Act and the Atomic Energy Act all provide protection against the transfer of technical data and other goods that threaten U.S. national security interests. In addition, Memoranda of Understanding with foreign governments providing for coproduction of defense equipment and R&D cooperation could be affected by action taken under the proposed bill. The Roundtable encourages the Committee to consider carefully the effects on these and other laws and agreements in its deliberations on the proposal.

Third, enactment of the bill will send conflicting signals to our trading partners about efforts to reduce and eliminate barriers to investment. The United States has taked a leadership role both in the new GATT round and in ongoing negotiations with Canada, to promote liberalization of investment.

Finally, The Roundtable is concerned about the enforcement provisions contemplated in the bill. Ordering the forfeiture of profits of lawfully operating business concern raises serious questions about U.S. commitments to protecting the legal rights of companies doing business in United States. Such provisions could have an enormously chilling effect on future foreign investment.

In closing I would like to add that The Roundtable fully supports efforts undertaken by the Congress to enact trade legislation this year. We are concerned that the proposal before the Committee today would seriously undermine Congress' stated goal in enacting a trade bill--promoting U.S. competitiveness. In its present form, this proposal would discourage inflows of foreign investment and technology, thwart U.S. efforts to eliminate trade and investment barriers in other countries, overlap and perhaps contradict existing laws, compromise U.S. obligations under international treaties and invite retaliation by our trading partners. In order to avoid these consequences, more thorough analysis should be undertaken.

Sincerely,

Jim Robinson

James D. Robinson III
Chairman, American
Express Company
Chairman, Business
Roundtable Trade and
Investment Task Force

NAM
National Association of Manufacturers

ALEXANDER B. TROWBRIDGE
President

June 11, 1987

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce, Science
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Your committee is presently considering a package of amendments to be incorporated in the omnibus trade bill. A major proposal included in this package is legislation introduced by Senator Exon that would authorize the President to prohibit or restrict foreign investment in the United States, if it has been determined that such investment would "threaten to impair the national security or essential commerce" of the United States. The National Association of Manufacturers opposes the Exon amendment as presently drafted because we believe that it would establish unneeded investment registration, regulation and monitoring by federal agencies and departments.

NAM supports the traditionally unrestricted flow of capital into the United States when it follows economic opportunity. Cognisant of essential government considerations such as national security, NAM recognizes the need for proper regulatory authority to ensure that foreign investment is not contrary or damaging to the national interest. Channels should be available whereby affected U.S. interests can raise such issues. Monitoring and regulatory devices, however, should be designed to avoid creating unnecessary inhibitions of foreign capital inflow. Equitable and fair treatment of foreign investment inflows should stimulate renewed initiatives to secure like treatment of American investment abroad.

NAM thus supports strongly the principle of national treatment of foreign investment, which maintains that such treatment should be in accordance with that received by domestic companies, as well as with international law. Administrations of both parties have used this principle as the basis for their policies in international economic negotiations, including the current GATT round and the bilateral trade negotiations with Canada. The Exon amendment as drafted would violate the national treatment principle in several major respects, not least by using "essential commercial interests" as the basis for prohibiting or restricting an investment. Moreover, application of review authority to all joint ventures and licensing agreements goes well beyond the limits of present regulation, and could well have an adverse impact on the international competitiveness of American business.

Under present conditions we believe that the policy of national treatment continues to be a correct one and fully applicable to present needs. However, we do understand that recent events have raised a question as to whether there are administrative deficiencies in the means by which the federal government addresses national security in the context of foreign direct investment. Fujitsu's proposed acquisition of Fairchild Semiconductor has been cited as a case in point.

Following careful consideration, Congress may wish to enact a straightforward, carefully drawn statutory basis for limiting foreign direct investment based only on reasons of national security. We do not see the need for broader authority relating to "essential commercial interests" or similar nebulous concepts. The authority to deny specific foreign direct investments should be the direct responsibility of the President.

A subject of this importance, particularly taking into account conditions relating to international finance, trade and the balance of payments, requires intensive review by the appropriate Congressional committees. Such review should include comprehensive examination of U.S. law and administrative practice as well as the opportunity for Congress to evaluate opposing views. The hearing that your committee held yesterday was an important step in that process, and I would request that you add this letter to the record of that hearing.

Sincerely,

Alexander B. Trowbridge
President
National Association of Manufacturers

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United States Council for International Business

Serving American Business as U.S. Affiliate of

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

June 11, 1987

The Honorable John Danforth
Russell Senate Office Building
Washington, DC 20510

Dear Senator:

The United States Council for International Business believes that adoption of the proposal by Senator Exon concerning foreign investment and U.S. national security would undermine the interests of United States business and have a negative impact on the United States economy. The proposal violates U.S. treaty commitments, invites retaliation or emulation by our trading partners, and undercuts United States efforts to promote open investment policies in other countries. Its passage would discourage foreign investment in the U.S. and damage the ability of U.S. based multinational corporations to conduct their business.

The United States Council for International Business, with a membership of some 300 multinational companies, firms and organizations, represents American business positions in the major international economic institutions. Its primary objective is to promote an open system of world trade, finance and investment. Through its affiliations with the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee to the OECD (BIAC), and the International Organisation of Employers (IOE), the Council officially consults with the United Nations system, including related agencies, the OECD, and the International Labor Organization (ILO).

The Exon proposal would require that the President, on recommendation by the Secretary of Commerce, restrict or prohibit foreign acquisitions or licensing which threaten "national security or essential commerce." A number of laws already restrict foreign investment in particularly sensitive areas of the U.S. economy, and an interagency mechanism, the Committee on Foreign Investment, already exists to review foreign direct investments that might have national security implications. Senator Exon's proposal goes far beyond existing restrictions, granting discretionary authority to this or future Administrations to prohibit new foreign investment in nearly every industrial sector of the U.S. economy.

No convincing case has been made for the need to increase the President's power to restrict acquisitions which could harm the national security. Even if this need were shown, more deliberate consideration of an appropriate mechanism would be required. The concept of "essential commerce" is excessively vague and too open to abuse to be recommended as a statutory standard.

The establishment of this new screening procedure will discourage foreign investment in the United States, denying capital and skills needed to create jobs, enhance U.S. competitiveness and finance the Federal budget deficit. Even if the new provisions were not broadly applied in practice, they would be likely to discourage foreign direct investment by adding to the uncertainty of the investment climate.

Moreover, passage of the Exon proposal would damage U.S. business interests abroad. American companies, business organizations and the U.S. Government have fought to dismantle and discourage arbitrary barriers to foreign investments. Yet, Senator Exon proposes the construction of just such a barrier at home. This proposal would violate United States obligations in a number of friendship, commerce and navigation treaties and the ten pending bilateral investment treaties. It also runs counter to the OECD Capital Movements Code and Declaration on National Treatment. The proposal would invite retaliation or emulation by countries which currently welcome U.S. companies and would encourage the maintenance and proliferation of barriers to American investment.

Such legislation could not come at a worse time. The U.S. has an important stake in the outcome of the upcoming GATT trade negotiations. At the behest of the business community, the U.S. government has obtained inclusion of investment issues on the GATT agenda. To create what will appear to our trading partners as new barriers to foreign investment would send exactly the wrong signal at a time when the U.S. is urging its trading partners to lift artificial barriers to U.S. trade and investment.

In short, the effects of the Exon proposal will be both self-defeating and counterproductive. The Council urges the Senate Committee on Commerce, Science and Transportation to reject it.

Sincerely yours,

Abraham Katz

Abraham Katz
President

The Honorable
John C. Danforth,
United States Senate.

DEPARTMENT OF STATE
WASHINGTON

June 12, 1987

Dear Senator Danforth:

I am writing to express our strong opposition to a proposal by Senator Exon to establish a review requirement for certain foreign direct investments. This is in the form of an amendment to the trade legislation which your committee has under consideration.

The U.S. has traditionally maintained a policy of open investment and non-discriminatory treatment of foreign investors. The President, in reaffirming this policy in 1983, recognized that there may be occasions for exceptions based on valid national security grounds. In fact, authority currently exists to protect U.S. national security through: (1) restrictions on foreign investment in sectors such as air and maritime transport, communications, and nuclear power; (2) regulations prohibiting classified defense work by non-U.S. firms; and (3) Presidential authority under the International Emergency Economic Powers Act (IEEPA). Additionally, the Committee on Foreign Investment in the United States (CFIUS), which is chaired by the Department of the Treasury, has an Executive Branch mandate to review investments in the United States which, in its judgment, might have major implications for United States national interests.

Expanding discriminatory treatment of foreign investment beyond these bounds would be a serious aberration from our open investment policy and entail a number of adverse consequences. It would undermine our efforts to liberalize investment restrictions in other countries through the OECD and the Uruguay Round of the GATT. It would also jeopardize our efforts to seek liberalization of Canada's investment regime in the current Free Trade Agreement (FTA) negotiations. Lastly, it would constitute a possible violation of our obligations under a number of treaties and multilateral agreements.

The Office of Management and Budget advises me submission of this letter to the Congress is consistent with the program of the Administration.

I want to express the Department's appreciation of your interest in this area and your support in defeating the Exon amendment.

Sincerely,

John C. Whitehead
Acting Secretary of State